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# The Family

An Ethnographical and Historical Outline with Descriptive  
Notes, Planned as a Text-book for the Use of  
College Lecturers and of Directors  
of Home-reading Clubs

By

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TO  
MY DAUGHTER AND SON



## PREFACE

IT is notable that almost all of the amazing quickening of the past two or three decades in the art of teaching has been confined to kindergarten and school. College teaching has changed, of course, and to a considerable extent during this period, but the change is, for the most part, merely a reflex from elementary school-teaching; it is not spontaneous. Through the demand for more varied interests and more direct personal observation in kindergarten and school, the curriculum of the college has also been broadened and varied, and the laboratory has encroached upon the lecture room. Imitation of the ever-widening university curriculum has played a part here, too. The purposive indifference to pedagogic method in the professional schools of the university has also been widely imitated in the college. This lack of spontaneous development in college instruction has led, together with other factors, to the swamping of the college in the school and university. This is not the place to discuss in any detail the relations of these three agents of education. It is plain, however, that if the college is to be continued as a distinct educational agency in the belief that its training and inspiration are essential to scholarly, effectual, and social habits of thought and work, something more is necessary than its mere readjustment in the time-table of education. Its subjects of study and methods of teaching must be differentiated from those of school

and university. An attempt in this direction is one of the two objects of this text-book.

The systematic study of particular social groups is peculiarly fitted for the college curriculum. The classification of social facts from written records and personal observation demands maturer powers of observation and analysis than any but the exceptional high school student possesses. Such a discipline is, however, on the other hand, essentially preliminary to university work. Much of the effort of university students in sociology, not to speak of other subjects, is futile because of their lack of training in scientific method.<sup>1</sup>

The family is, for several reasons, a particularly well-chosen subject for the elementary student of society. Many of the facts discussed have been part of his or her personal experience, and yet so different are the popular and the scientific points of view in regard to social facts that the student's power of apperception will be developed through numberless opportunities to consider long-known facts in wholly novel relations to one another. The subject calls for the classification of a pretty definite number of specific facts; the descriptive work may be well defined and concise. And yet the family's function and structure are so closely connected with the social organisation in general that in their study an outlook is opened upon other social groups and upon the working of far-reaching social laws.

No attempt has been made to give more than an

<sup>1</sup> Compare Steinmetz: *Classification des types sociaux et catalogue des peuples* in *L'année sociologique*, 1898-1899, pp. 43-147, for this failure in method on the part of sociologists in general.



outline of the topics to be discussed in the class-room. The instructor, therefore, is not relieved of a thorough study of the subject he is teaching. A text-book cannot take the place of scholarship. It may, however, serve to a certain extent as a time-saving device. The data in Notes D, for example, will aid the instructor as a check upon the accuracy and completeness of the students' analyses. The bibliographical notes will also serve as time economies. In other words, this text-book aims to be a *pedagogic device* for the university lecturers who are so commonly called upon to conduct elementary courses in sociology. The college method ought to be, in my opinion, primarily pedagogic, but the borrowed university scientist, who naturally finds this additional tax of college teaching upon his already overtaxed time irksome, slips, as I have already suggested, into the lecture and seminar method of the university, to the loss—and satisfaction—of his class.

The history of theory has been purposely omitted from these outlines. Except for the advanced student, analysis of descriptive data is more profitable than study of family theory. In other words, in studying the family, ethnography, and in particular ethnography as it touches in its function of classification upon ethnology, is better adapted than ethnology proper for the elementary student. In sociology, for example, as in other sciences, the habit of evolutionary thought is almost too readily acquired by the embryonic scientist. *Stages of development* are clamoured for and pursued. This is merely one of the innumerable expressions of the mind's classifying habit, a habit which may lead to non-scientific just as well as to scientific results. Freed

from the history of theory, freed also from illustrative facts, the latter being contained in Notes D, the lecture outlines are reduced to the presentation of a few important and well-established deductions and to schemes of classification.

Notes A contain references to fuller discussions of the topics than that given in the lecture outlines. References to especially interesting illustrative data are also given in these notes. Notes B contain brief summaries of theory bearing on topics in the lecture outlines. These notes will be of use in assigning special tasks to the student who is exceptionally qualified to work in the field of controversy. Notes C contain further suggestions for original research by the *advanced* student. The bibliographical notes, as well as the list of authorities given in the *Introduction*, have been carefully compiled from a primarily pedagogic standpoint. From a bibliographical standpoint they are incomplete.

The *Introduction* suggests methods for the class instructor to follow. Through the analysis of written records the student will receive training in the use of primary sources of authority—one of the chief requisites of scholarship. The plan for personal observation of a small number of families has many advantages for the student,—the training of his faculty of observation (a faculty that is lamentably undeveloped in the average college student), the development of social tact and sympathy, the broadening of his interests in and his knowledge of his social environment, and, consequently, the enlarging of his opportunities for usefulness to his community. From a narrower pedagogic point of view the under-

lying object of both plans of study is drill in the application by the student of knowledge acquired in the lecture room. The average college student is mentally lazy. It is the universal experience of college instructors that text-book or lecture-imparted information is rarely assimilated by their students. How seldom does one see any effort to apply the facts or methods learned in one course to another course, or to personal experiences outside of college walls. The college note-book is a kind of intellectual graveyard. Unwillingness to think in concrete terms is another evidence of this mental supineness. A carefully supervised use of the schedules for recording the observations of the families visited and a thoughtful classification of social facts noted from ethnographical or historical records will lead the student into definite and concrete ways of thinking. Furthermore, it will train him to test and evaluate evidence,—both documentary evidence and evidence<sup>1</sup> that has been directly acquired,—a particularly useful lesson for the sociological student.

Ethical considerations have been relegated to a distinct lecture. For the sake of ethical thought and practice, if for nothing else, the question of *what ought to be* must at first be clearly separated from the question of *what is*. The confusion of these two points of view is responsible for what sometimes proves to be distinctly unethical conduct.

One form of this confusion is too commonly back of the widespread unwillingness in modern civilisation to enlighten boys and girls in many matters of marriage and parenthood. It is hoped that where outside

<sup>1</sup> See pp. 16-19.

of the college lecture room this reluctance is beginning to disappear this text-book may be of use. Unfortunately, in many parts of our country, a college education is not yet considered as necessary or as desirable for young women as for young men. The supporters of the argument that the place for girls is exclusively in the home must take their stand on the ground that the home education given to girls of college age, seventeen to twenty-one, is, or may be, superior to academic education (*plus home education*), *i. e.*, it more adequately trains the girl for her future life. Perhaps this text-book will prove a useful guide for the *intelligent* mothers who hold this view of the value of home-training and who, *single-handed*, undertake the responsibility of fitting their daughters for useful and joyous womanhood. This is the second object of this text-book.

General unwillingness to learn the story of social origins and developments, particularly those of sexual and familial relations, is the mental attitude of the average person. It is, perhaps, the most notable of all survivals of primitive taboos and it still serves the same purpose as the primitive taboo, *i. e.*, the preservation of the group's social customs and traditions. To-day, to be sure, it is doing this only to a limited extent. The economic and legal changes of the nineteenth century in family structure and, more significant even than these changes, contemporary proneness to discuss such subjects as prostitution, divorce, etc., demonstrate a giving way of familial customs and traditions. Curiously enough, where such discussions abound, loathness to examine the history of the subject sentimentally persists. The plea is made that



knowledge of the origin and career of a perhaps still cherished family usage will lessen its current valuation. There is some truth in the warning that in such cases especially a little knowledge is a dangerous thing. In most cases, however, the rejoinder is *increase the knowledge*. Fuller knowledge makes us realise that an humble origin, or what we may please to call an humble origin, is in no way prejudicial to the developed form or function.<sup>1</sup>

Inquiry-precluding taboo and, for that matter, contempt-breeding knowledge, are dangerous *débris* choking up possible outlets for a stream of progressive and inspiring moral theory. The dogma that marriage is an unquestionable sacrament and the dictum that it is merely a survival of a past form of property-holding are both dams of this kind.

If the golden rule of democracy, equal opportunity for all for the development of personality, is to become a more influential social ideal than it is now, if individualism and altruism are to be reconciled in the view that child-bearing and rearing is the most important of all social services, the desirability of change in many social relations in and out of the family will have to be frankly faced, and, if necessary, new adaptations must be welcomed. To this end knowledge of the past and unhampered discussion of ethical *desiderata* for the future are necessary. For those persons to whom truth for truth's sake is not always a justification this should be my warrant for the notice of certain facts which are generally ignored and for what may

<sup>1</sup> Cp. the luminous discussion of *existential* and *spiritual* judgments by William James in *The Varieties of Religious Experience*, New York, London, and Bombay, 1902, p.4.

seem in Lecture 15 undue frankness in refusing to shirk consideration of possible issues.

In view of the simple character of the lecture outlines as schemes of classification references to authorities are seldom made. All of the works given in the bibliographical notes have been of more or less service. I am under special obligation to Post, Dargun, and Steinmetz. The notes by Steinmetz which are scattered through the answers to the question schedules on the juridical relations of the natives of Africa and Oceanica of the *Internationale Vereinigung für vergleichende Rechtswissenschaft und Volkswirtschaftslehre zu Berlin*, as well as his methodological criticism in *Die neueren Forschungen zur Geschichte der menschlichen Familie* (*Zt. f. Socialw.*, II, 1899, 685-695), are especially valuable. Howard's useful summaries in the introductory chapters of his *History of Matrimonial Institutions* were time-saving in the preparation of the bibliographical notes. Professor Giddings has been kind enough to read Lecture 15 in manuscript and to suggest a clearer statement than that originally made about the desirability of youthful trial marriage.



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moved, and legal provisions prohibiting remarriage after separation should be repealed—Failure to realise that sexual restraint is primarily for the sake of offspring shown in current divorce agitation—Effect upon offspring ought to be the chief consideration in divorce—A two-fold divorce law suggested, one for childless divorce seekers and one for divorce seekers with children—Objection that this would encourage voluntarily childless marriage—The latter a progressive substitute for prostitution; but, like prostitution, a check upon the development of personality—An outcome of excessive, although one-sided individualism—Restricted child-bearing not practised by proper classes—Dearth of teaching on subject—Evil effects of high birth and correspondingly high infant mortality rates among the lowest economic and cultural classes—Child-labour, age of consent, and compulsory education laws point to an abandonment of our *laissez-faire* policy in regard to childhood—Systematic training of girls in care of young children and supervision of children *in their homes* future possibilities—The future of the family.

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# INTRODUCTION

## METHODS

I. It is suggested that at the first meeting of instructor and class one of the communities listed below be chosen by each student for special study. During the year he should be expected to become thoroughly familiar with the cited records or descriptions of the community chosen. He is to make a classification of all the facts bearing upon the family that he finds in these sources of authority. He should use the card system of note keeping.<sup>1</sup> His classification will be based upon a typewritten outline which the instructor will give at the outset to the class. The outline may be compiled from the summaries given in the table of contents, and from the note given below, pages 4-6, on Reports by the Students. The student will be expected to bring with him to class that part of his classification which concerns the topics to be immediately discussed. In developing the topics, the instructor will then be able to call upon the class for illustrative facts.

## FOR STUDY BY THE STUDENTS

### VEDDAHS.

\* Sarasin, P. and Fr., *Die Weddahs von Ceylon*, Wiesbaden, 1893.

<sup>1</sup> In this system, each fact is recorded on a separate slip of paper, and these slips, uniform in size, are then grouped in envelopes topically labelled.

\* Data compiled in Notes D.

## YAGHAN (Fuegians of Cape Horn).

\* Hyades and Deniker, *Mission scientifique du Cap Horn*, 1882-1883, vol. vii., Paris, 1891.

\* *Bulletins de la Société d'Anthropologie de Paris*, vii., 169 ff., Paris, 1894.

\* *Ib.*, x., 327-340, Paris, 1887.

## THE NATIVES OF AUSTRALIA.

\* Spencer and Gillen, *The Native Tribes of Central Australia*, London, 1899.

*Ib.*, *The Northern Tribes of Central Australia*, London and New York, 1904.

Howitt, *The Native Tribes of South-East Australia*, London and New York, 1904.

Roth, *North-West-Central Queensland Aborigines*, London, 1899.

Cunow, *Die Verwandtschafts-Organisation der Australneger*, Stuttgart, 1894.

## ESKIMO.

\* Murdock, *Ethnological Results of the Point Barrow Expedition*, 9th Annual Report (1892) of the Bureau of Ethnology.

\* Nelson, *The Eskimo about Behring Strait*, 18th Annual Report, Part I. (1899), of the Bureau of Ethnology.

\* Boas, *The Central Eskimo*, 6th Annual Report (1888) of the Bureau of Ethnology.

## WYANDOTS.

\* Powell, *Wyandot Government*, 1st Annual Report (1881) of the Bureau of Ethnology.

## THOMPSON RIVER INDIANS.

\* Teit, *The Thompson River Indians*, vol. ii. of the American Museum of Natural History Memoirs, New York, 1900.

## MELANESIANS.

\* Codrington, *The Melaneseans*, Oxford, 1891.

Danks, *Marriage Customs of the New Britain Group*, in *Journal of the Anthropological Institute*, xviii., 281-294.

## SLAVE AND GOLD COAST AFRICANS.

\* Ellis, *The Tshi-speaking Peoples of the Gold Coast of West Africa*, London, 1887.

\* *The Ewe-speaking Peoples of the Slave Coast of West Africa*, London, 1890.

\* *The Yoruba-speaking peoples of the Slave Coast of West Africa*, London, 1894.

Post, *Afrikanische Jurisprudenz*, Oldenburg and Leipzig, 1887.

McLennan, *Studies in Ancient History* (Second Series), London and New York, 1896, pp. 405-483.

## KABYLES.

\* Hanoteau and Letourneux, *La Kabylie et les coutumes Kabyles*, Paris, 1893.

## ANCIENT ARABS.

\* *The Qur' An*, vols. vi. and ix., in *Sacred Books of the East*, edited by F. Max Müller, Oxford, 1900.

Robertson-Smith, *The History of Marriage and Kinship in Ancient Arabia*, London, 1903.

## ANCIENT HEBREWS.

\* *The Pentateuch*.

Lichtschein, *Die Ehe nach mosaisch-talmudischer Auffassung und das mosaisch-talmudische Eherecht*, Leipzig, 1879.

## ANCIENT BABYLONIANS.

\* *The Code of Hammurabi*, edited by R. F. Harper, Chicago, 1904.

## ANCIENT AND MODERN CHINESE.

\* *Lî Kî*, translated by James Legge, vols. xxvii. and xxviii. in *Sacred Books of the East*, Oxford, 1885.

De Groot, *The Religious System of China*, Leyden, 1894.

*Ta Tsing Leu Lee*, translated by Sir George Thomas Staunton, London, 1810.

## ANCIENT HINDUS.

\* *The Laws of Manu*, vol. xxv., in *Sacred Books of the East*, Oxford, 1886.

## ANCIENT GREEKS.

*The Iliad and the Odyssey*, translated by Butcher and Lang, Boston, 1882.

Keller, *Homeric Society: A Sociological Study of the Iliad and Odyssey*, London, 1902.

## ANCIENT ROMANS.

\* *The Institutes of Gaius and Justinian*.

## ANCIENT WELCH.

*Ancient Laws and Institutes of Wales*, 1841.

## ANCIENT IRISH

*Ancient Laws of Ireland*, Dublin and London, 1865.

## ANGLO-SAXONS.

*Ancient Laws and Institutes of England*, 1840.

Roeder, *Die Familie bei den Angelsachsen*, Halle, 1899.

Howard, *A History of Matrimonial Institutions*, Part II., Chicago and London, 1904.

## MODERN FRENCH.

\* *French Civil Code*, tr. by Cachard, London, 1895.

Glasson, *Le mariage civil et le divorce*, Paris.

## THE PEOPLE OF THE UNITED STATES.

*Records of the Governor and Company of Massachusetts Bay*, Boston, 1853.

*The Public Records of the Colony of Connecticut*, edited by J. H. Trumbull, Hartford, 1850-1890.

*The Records of New Amsterdam from 1653 to 1674*, edited by B. Fernow, New York, 1897.

*Blackstone's Commentaries; Kent's Commentaries*.

\* Schouler, *A Treatise on the Law of the Domestic Relations*, Boston, 1895.

Bishop, *New Commentaries on Marriage, Divorce, and Separation*, Chicago, 1891.

Howard, *A History of Matrimonial Institutions*, Part III.

## REPORTS BY THE STUDENTS

## LECTURE 2:

State customary duration of lactation period,

\* Data compiled in Notes D.



causes, if they exist, for disuse of function, customary age at marriage, at initiation of youth or majority. State other facts showing filial dependence or independence. Describe initiation or majority ceremonial.

LECTURE 3:

State usual number of births per family. Describe, if they exist, infanticide, abortion, etc., practices; also public opinion on subject, and implicit or alleged reasons for practices. State conditions making offspring desirable or undesirable and facts in addition to infanticide, etc., suggestive of public feeling on subject.

LECTURE 4:

State facts showing parental ownership or control and, if it exists, of kinsfolks' share in control.

LECTURE 5:

State facts indicating prevailing type of parenthood; also facts showing parental sympathy or solicitude for good of offspring. Describe differences in education of boys and girls.

LECTURE 6:

Describe treatment of the unchaste before marriage, of the adulterer or adulteress rapist, seducer, prostitute, illegitimate child.

LECTURE 7:

Describe prevailing forms of marriage and, in polygamy, relations between the wives or between the husbands. Describe lot of widow, of divorced woman, and of offspring of divorced parents; also procedure and causes of divorce.



## LECTURE 8:

State in what ways sexual choice, (1) of youth of both sexes, (2) of mature men and women, is limited, describing punishments for breaking prevailing social regulations of sexual choice.

## LECTURE 9:

Describe betrothal and marriage ceremonial. State extent of wife's ties to her family after her marriage. Describe conjugal duties and obligations. State in what ways wife is excluded from husband's interests, occupations, etc.

## LECTURE 10:

Describe economic activities of wife and of husband. State facts showing whether wife is considered a chattel to be disposed of at husband's pleasure or at that of his heirs, or whether she is herself a property owner.

## LECTURE 11:

State method of reckoning descent and of computing kinship. Describe facts of fictitious parenthood, various kinds of adoption, etc.

## LECTURE 12:

Describe prevailing kinship groups, giving in detail religious, economic, and juridical ties of group.

## LECTURE 13:

Describe as in Lecture 12.

## LECTURE 14:

Describe as in Lecture 12.

## LECTURE 15:

Present analysis of highest ethical type of family.

The *questionnaire* in the Appendix will be suggestive to advanced students in their work of analysis.

Notes D are intended to present the most striking facts upon which the topical outlines are based in a clear and condensed form. Such facts are too frequently stated in such a scattered way that they merely serve to bewilder the reader. The order observed in tabulating both groups and facts is that which will best illustrate the topical treatment. Towards the end of the course the instructor may find it a profitable exercise for the students to group together the familial characteristics of each community, comparing the actual development of the family within each community and the familial characteristics of one community with those of another with the criteria of family development that are suggested in the lecture outlines. Many irregularities will, of course, be found, and the peculiar social conditions to which they are due will have to be explained. The groups described in Notes D include those cited and *starred* in the foregoing list, and, as already stated, these brief summaries may enable the instructor to keep a close watch without much expenditure of time upon the special work of each student.

In case of translation from a non-English source, although, for the sake of condensation, a close translation has, in many cases, not been made, yet great care has been taken that the exact meaning should not suffer through condensation.

At his first report the student should give a general description of the people whose family organisation he is to study in detail. It should be based on reference reading assigned to him during the first lecture hour. The bounds and nature of the inhabited

territory, the size of the group, its modes of subsistence, its economic and political classes, and its general social organisation, tribal, monarchical, democratic, etc., should be noted and reported. In particular, the prevailing means in general of enforcing custom should be noted. Whenever possible (our information is sometimes deplorably scant in this connection) the nature of the sanction for the custom should be given. Post's *Grundriss der ethnologischen Jurisprudenz* will prove a valuable reference book for this purpose. Other general data may be obtained from standard encyclopedias, from historical works like Rogers's *A History of Babylonia and Assyria*, vol. i., New York and Cincinnati, 1900; Paton's *The Early History of Syria and Palestine*, New York, 1901; Barton's *A Sketch of Semitic Origins*, New York and London, 1902; or from recent works on general anthropology such as Deniker's *The Races of Man*, London, 1901; or Keane's *Ethnology*, Cambridge, 1891, and *Man, Past and Present*, Cambridge, 1899. Stanford's *Compendium of Geography and Travel*, London, 1878-1885, and Mill's *International Geography*, New York, 1900, London, 1903, are also useful reference books. The student should also, at this time, give an account of the source or sources of authority which he is to draw upon in his special study.

In view of what has already been said, it is perhaps unnecessary to suggest that the expository method of lecturing be practised as little as possible. In addition to the constant calling forth of the students' knowledge of the groups which are their special subjects of study, the instructor may greatly stimulate

the students' interest by asking questions anticipatory of the ideas to be developed in the topical outline. I know of nothing more stimulating in the lecture-room than such anticipatory questions. In illustration, the following questions suggest themselves:

If prolongation of the period of suckling is part of the lengthening out of infancy from lower to higher orders among mammals, why is it that a shortening of the lactation period goes on among human groups *pari passu* with advances in general culture?

What is the most general reason for the killing of one child in a twin birth?

What is the chief way by which the child adapts himself to his environment?

What effects upon parenthood has a very marked segregation of the sexes?

How does the form of sexual intercourse affect offspring?

What relation has there been between the form and the duration of marriage?

What restrictions are there in different social groups, your own, for example, upon absolute freedom of sexual choice?

How may descent be reckoned?

What is the criterion of a developed type of family?

II. It is no easy task for an instructor to arrange for systematic observation by his students of particular social facts in their environment. The facts must be neither too familiar nor too novel or inaccessible. In the first case, the student will overlook them or will find it difficult to look at them from a scientific point of view, —they have become so much a part of his experience from a different standpoint. In the second

case, conditions of observation may require an unjustifiable amount of the student's time, or the difficulties of classification may be excessive. After using the following method of field work for six years, I submit it here, in considerable detail, because it seems to meet the aforesaid requirements, and because in general it fits in with the lecture outlines.

The student is to pay weekly visits to two or more families with whom she<sup>1</sup> has been previously unacquainted. This visiting may be arranged for through the local Charity Organisation Society, or through any relief society that makes use of the volunteer "friendly visitor" in its work, or in any other way that suggests itself. Whatever method is employed, the visiting must be systematic, and there must be some reason other than that of getting information in sight. It is preferable for the visiting to start on a business rather than a charitable footing. The social relations of those visited are, in the former case, more normal, and their attitude to the visitor is more frank and friendly. Insurance or rent collecting might, under special circumstances, serve this purpose. But, wherever the penny provident saving system is established, weekly visits in the character of penny provident collector from the penny provident station of the given neighbourhood, preferably a station in a social settlement, is, for women students at least, undoubtedly the best arrangement. It will be well to limit the families to those living in a particular neighbourhood, presum-

<sup>1</sup> This particular style of visiting has been followed only by women students; but it would probably be practicable for men students with certain changes of detail. The visits would have to be paid at times when the men of the families were at home.



ably that of the "station." Families living in the same house, or near-by houses, may be in charge of the same collector. This arrangement economises the time of the student, it seems more natural to the depositors, and it gives the student opportunities to learn of the relations of neighbours to neighbours.

A note-book is to be provided for each family, and the facts observed at each visit are to be promptly and carefully recorded by the student. No attempt at classification is to be made in keeping the note-books. The student should be told to record whatever she considers a social fact or a fact which bears in some way or other upon the social life of the family. A mass of heterogeneous material will doubtless result. After the first two or three visits, the instructor is to start the student at work on the tabular classification of such facts as are called for by the series of schedules given on pages 16-19.

The instructor may put a model schedule on the blackboard or prepare one for each student. In the latter case, the student should, herself, prepare the schedules needed for the second or third family. The average student is curiously unskilful in preparing tabular forms. The material used should be a rather stiff cardboard, which may or may not be red-ruled in advance. In the latter case, the ruling should be horizontal only, allowing for varying proportions for the subdivisions. The recording should never be crowded; more space may be obtained by adding together, by means of glued paper, two or more blanks for one subject. The records of each family should be kept separate in a large manila-paper envelope labelled with the name of the family. It will be well to give the

schedules out one at a time as the corresponding topics are discussed in the lecture-room. It is good practice for the students to put tentative schedules on the blackboard before receiving the model schedule from the instructor. Naturally, there is nothing final about the proposed scheme of classification. In fact the student should be encouraged to change or add to the classification, these changes to be accepted, however, by all the students.

The student should be required to give a source of authority for every statement. Each person from whom information is received should be numbered, and the same number should refer to the same person throughout the set of schedules. Towards the end of the observation period, the student should also indicate, in connection with each statement where the record is incomplete, the reason or reasons for the lack of information. Recurrent reasons, such as ignorance or unwillingness to talk on the part of the person questioned, may be indicated in a way similar to the method of giving sources of authority, using letters instead of numbers. Special reasons for lack of information may be given on the back of the respective schedules. This plan tends to make the investigation of the student more thorough, as well as helping the instructor to point out quickly to her her shortcomings. Moreover, in cases where, owing to peculiar reticence, or suspicion, or indifference, it is unusually difficult for the visitor to secure the desired information, she is less apt to become discouraged when she can make plain the particular disadvantages under which she is working.

A proper use of the note-book and schedules, *i.e.*,

discrimination in observing facts having a direct bearing upon the particular family study, truly significant facts, and accuracy and completeness of statement in recording, requires, in most cases, a special training of the individual student and a thorough oversight of her work. This can only be accomplished through weekly consultations with the instructor. The following entries made during an actual course of instruction are characteristic of the work of the average untrained student and illustrate the kind of correction called for.

## STUDENT'S RECORD

RECORD CORRECTED ACCORDING TO  
INSTRUCTOR'S SUGGESTIONS

Johnny.

Johnny<sup>1</sup>: John Joseph [patron saint]  
Brown.<sup>2</sup>In hospital 2 years  
ago.Two weeks in March,<sup>a</sup> 1898.<sup>2</sup>

Nursed baby.

Suckled by mother "about two years."<sup>1</sup>  
Fed "whenever he cried."<sup>2</sup> (These  
facts recorded in note-book, but not  
given on schedules.)No other food,<sup>2</sup> *Cp.* date of birth of  
Thomas Brown (showing that mother  
was pregnant during latter part of lacta-  
tion period).Goes to Sunday  
School. Does n't  
know the exact  
address.Sunday School "round the corner"<sup>2</sup>  
(All Saints Church S. S., 128 East 39).<sup>1</sup>  
"Off and on for three years"<sup>2</sup> (1897-).  
Sunday, 10.30 A. M., 3, 4, 1900, at home<sup>1</sup>,  
"Don't want to go to S. S. to-day."<sup>2</sup>  
Hours of S. S. 9.30-10.45.<sup>3</sup> "I like  
to have him go to get him out of the  
way."<sup>2</sup><sup>1</sup> Personal observation.<sup>2</sup> Eliza Stewart Brown (Mother).<sup>3</sup> John Joseph Brown.<sup>a</sup> Person answering does not remember exactly.

Discrimination, accuracy, etc., and thoroughness are not all that is required of the student if she is to become a skilled social observer. She must show a considerable amount of sympathy and tact as well. If she is not already possessed of these traits, of course she will find it a hard task to acquire them for any special occasion. But even here the instructor can be of help in leading the student to note the resemblances as well as the differences between herself and those visited, and in suggesting subjects for friendly conversation. It may happen that the student is ordinarily a so-called responsive person, but that in her visiting she feels constrained by the idea that she is an unwarrantable and deceptive intruder upon family privacy. She feels hypocritical in asking questions or in directing conversation along the lines suggested by the schedule classifications. I think this doubt may be cleared away if she is made to see clearly the many ways in which, in addition to the teaching of thrift, if she is a penny provident collector, she may be of service to the family she is visiting. She may encourage the children to be regular in school attendance, or she may find a place in a neighbouring kindergarten for a younger child. She may persuade some member of the family to join a club in the church or settlement or become a member of the circulating library. In times of illness she may refer the family to the best dispensary or hospital, or she may secure the service of a district nurse for them. She may see to it that neglected eyes or throat or teeth are attended to. She may make suggestions in regard to ventilation, to exercise, or even to the more healthful dressing or feeding of the child-

ren.<sup>1</sup> No doubt much of this information the student will have to first learn for herself, particularly in regard to the institutional opportunities of the neighbourhood. This leads to the second consideration, which ought to overweigh in her mind any feeling of unfairness or bad taste. Through this education in practical philanthropy, through this acquaintance with institutional methods as well as with the special needs of special families, she is fitting herself for many forms of social usefulness. She may consider the families she visits unconscious partners, so to speak, through the experiences they give her, in her coming social service.

<sup>1</sup> Clews, *Field Work in Teaching Sociology* in *Educational Review*, September, 1900.



# HEADINGS FOR SCHEDULES FOR OBSERVATION OF FAMILIES PARENTHOOD

.....FAMILY

Name.	Date of birth (and death).	Physical care: Lactation and other forms of nour- ishment (character and regularity); clothing; sleep; treatment for sick- ness, physical de- fects; fresh air; cleanliness.	Home education: Training in physi- cal habits, obedi- ence, truth-telling, order, punctuality, industry, kindness. Parental attention to school and church attendance.	Additional prac- tices (and beliefs) indicative of parental sympathy and sense of responsibility.	Period of parental support and pro- tection. [Age at going to work; economic and sym- pathetic relations between parents and wage-earning offspring (beliefs and practices).]	Filial support of parents (beliefs and practices).
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## MARRIAGE

.....FAMILY

Name.	Date of marriage (or marriage; duration of widow- or widower-hood).	Courtship (acquaintance with bride or groom before marriage; incidents of courtship; preferred traits in bride or groom; reasons for marrying; economic provisions for marriage; wedding).	Division of labour and economic direction of household since marriage.	Sympathetic relations and common interests of husband and wife.
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## KINSFOLK

.....FAMILY

Name.	Position among kinsfolk.	Past and present residences.	Communication and intercourse. (Visits. Aid; gifts and personal service. Letters. Photographs.)
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Many other schedules referring to the economic and cultural conditions and traits of the family may be planned as exercises in tabular record-keeping. For example :

## HOUSING

.....FAMILY

Position of residence (street address; description of building in which home is placed, of surrounding buildings, etc.).	Rent.	Rooms				Closet (position, drainage, number of families using it, etc.).	Methods of house-keeping.
		Use.	Dimensions.	Number and outlook of windows.	Fixtures.	Furniture.	

The following arrangement for facts which the student has failed to classify will be of service<sup>1</sup>:

INTERESTING FACTS STILL UNCLASSIFIED

Date of Observation.	.....FAMILY	Subsequent Classification.

The following books and articles will be of practical service to the penny provident visitor:

Balch, *Suggestions for a Study of Conditions of City Life*, Boston, 1904; Richmond, *Friendly Visiting*; Hunter, *The Savings Society of Newport*, in *The Charities Review*, October, 1899; Holt, *The Care and Feeding of Children*, New York and London, 1903. Of particular use in New York City will be *Charities Directory*, published every year by the Charity Organization Society; Dinwiddie, *The Tenants' Manual*, Greenwich House Publications No. 1, New York City, 1903; Herzfeld, *Family Monographs*, New York City, 1905.

<sup>1</sup> A like plan may be followed in the card system used in the ethnographic or historical group studies in the case of facts for which, because of their limited bearing or exceptional nature, no place is found in the topical outlines.

## LECTURE I

### THE MEANING OF THE FAMILY IN EVOLUTION

The biological  
value of infancy

THE lengthening of infancy is an important step in the evolution of the higher forms of life. Creatures low in the scale of life are born possessed of all the characteristics of their species. As Mr. Fiske has worded it, they get their education before they are born. There is little chance for individual variation. More complex organisations, on the other hand, are born in a more or less plastic state. Their development continues after birth. This plasticity, this capacity for development, makes individual variation possible, and individual variation is the key to natural selection.<sup>1</sup>

The value of  
parental care

Infancy—and by this term we mean the whole period of immaturity after birth—is a more or less helpless and dependent state. In order that organisms may survive this period, protection is necessary. Parental care is an important means of protection. We find that as infancy is prolonged in the progress of species, the care given to offspring by parents is increased. It extends over a longer period and it is directed more and more towards the total welfare of offspring. The need of a potentially many-sided and enduring kind of

Although recent contributions to the theory of variation, notably the re-introduced Mendelian theory, greatly affect the Darwinian theory of natural selection, nevertheless the evolutionary significance of the prolongation of infancy and of the family remains unchanged. See Morgan, *Evolution and Adaptation*, New York and London, 1903, chap. viii.



parental care is filled through the social group we call the family.<sup>1</sup>

The family has been only one of the many forms of association that have served in the evolution of life. The ability to leave progeny is one of the success winning characters in the struggle of natural selection. This ability is greatly enhanced through the family. It will be our task to learn, through a study of family structure, how in the care of offspring the function of the family form of association has been performed.<sup>2</sup>

In the lower forms of animal life, not to consider the lowest forms of all, where generation by gemmation or by fission occurs, post-natal relations between parents and offspring either do not exist at all or are of the most transient nature. In many species of fish and amphibia external fertilisation takes place; the female deposits her ova and the male sprinkles them with his milt. The fertilised eggs are then hatched without the aid of either parent. In other species there is internal fertilisation, and the fertilised eggs are retained in the ovary or oviduct of the female until they are hatched. The males of several species carry the fertilised eggs until hatched in their mouths or in pouches of overlapping skin on the under side of their body. The males of other species make nests of seaweed or scrape holes in mud or gravel for the fertilised eggs. In a comparatively small number of

The relation of the family to evolution

The development of protective relations between parents and offspring

<sup>1</sup> By the term *family* we shall mean parents and their offspring. Qualifying expressions will be used in referring to larger kinship groups.

<sup>2</sup> It is difficult, if not impossible, to distinguish sharply between physiological and social facts in family relations. The growth of parental sympathy, for example, is undoubtedly a social fact, but it is equally certain that its genesis lies in physiological activities. Therefore, in discussing the beginnings of parental relations, we shall not attempt to differentiate between social and physiological facts.

species the females are viviparous. Among the females of a great many species of amphibia, external sac-gestation is the rule. In several species the male helps to place the extruded eggs in the hatching sacs. With one exception, internal fertilisation characterises the class of reptiles, and the higher species are viviparous. A few species of oviparous snakes incubate their eggs. Among birds the incubating habit is fully developed. The lowest species scrape holes in the sand for their eggs, and the males are the sole or chief brooders. Many of the young of the higher species are hatched blind, all are hatched naked and dependent upon their parents for warmth and nourishment. The young of mammals are born, after a more or less prolonged period of gestation, still more helpless. The females of certain species of marsupials, an order low in the class, carry and suckle their young in abdominal pouches for several months after birth. In the higher orders of mammals, the characteristic process of lactation is more developed than in the lower. The process of gestation is also more developed. The attachment between the foetus and the uterus is closer. The nutrition of the foetus is more direct. The area of attachment is called the placenta and the higher orders of mammals, in which it is larger and more complex, are called the *placentia*. As the attachment becomes still more complex, the *placentia* are divided into the non-deciduate, in which the attachment is less complex and the response of the uterus to the needs of the foetus less immediate, and the deciduate, in which the attachment is more complex and is detached from the uterus after birth. The young of the deciduate *placentia* are all born quite feeble

and incapable of maintaining their own temperature. Among the lemurs, monkeys, and apes, the placental attachment is still more complex, gestation longer, and the post-natal relations of parents and offspring more permanent. Old-world monkeys are suckled for twelve months. They do not reach maturity for four or five years. The young of the gibbon, the lowest genus of apes, stay with the mother for seven months. They do not mature for ten or more years. Female oranges and chimpanzees are accompanied by offspring of one or two years of age, even after the birth of a younger relative. A gorilla family consists of an old male, a female, and their offspring.

Let us now consider these facts of developing parent-hood from the point of view of birth- and death-rates.

The relation  
between death-  
rates and birth-  
rates

In view of the fact that in the struggle for existence the unprotected egg of a given species is prey for a great number of other species, the chance of its being hatched or, if hatched, of reaching maturity is almost infinitely small. Under these conditions a species can maintain itself only through immense fertility. To offset an enormous death-rate an enormous birth-rate is necessary. Many species of fish spawn by thousands; certain species even by millions. Of the 27,800 eggs spawned by the female herring, for example, half are not even fertilised by the male; a large part of the remainder are devoured by other fish and by sea birds, and of those that are finally hatched not more than one tenth survive six months. As soon as the slightest trace of parental care is discovered the chance of survival is increased and *the birth-rate is lowered*. Mr. Sutherland has made some interesting calculations along this line. Of fish, he states that

The relation  
between parental  
care and birth-rate

"of species that exhibit no sort of parental care, the average of forty-nine gives 1,040,000 eggs to a female each year; while among those that make nests, or an apology for nests, the number is only about 10,000. Among those which have any protective tricks, such as carrying the eggs in pouches, or attached to the body, or in the mouth, the average number is 1000; while among those whose care takes the form of a uterine or quasi-uterine gestation which brings the young into the world alive, an average of fifty-six eggs is quite sufficient."<sup>1</sup>

The same diminution of the birth-rate accompanies the development of parental care from class to class. The average of seventy-five well-distributed and typical species of fish was found to be 646,000 eggs; of twenty species of amphibia, 441 eggs; of thirty-nine species of reptiles, 17 eggs; of 2000 typical species of birds, a trifle over five eggs; of eighty-two typical species of mammals, 3.21 offspring to each female every year. The higher orders of mammals taken together average only 1.3 offspring each year, and the apes and mankind do not exceed one every two years.<sup>2</sup>

Diminution of offspring is a threefold gain to a species. (1) It lessens the vital drain upon the parent.<sup>3</sup> (2) It enables the size and capacity of the limited number of offspring to be increased. (3) In the case of the higher developments of parental care after birth, it concentrates the advantage of that care upon a few instead of scattering it, and thereby weakening its influence, upon many.

<sup>1</sup> Sutherland, *The Origin and Growth of the Moral Instinct*, New York and Bombay, 1898, i., 40.

<sup>2</sup> *Ibid.*, i., 41.

<sup>3</sup> Of interest in this connection is the fact that among many forms of vegetal life and among some low forms of animal life the act of reproduction terminates the life of the parent.

In a later lecture<sup>1</sup> we shall learn that many human groups have been more or less conscious of these advantages, and have more or less purposively made use of artificial means to secure them.<sup>2</sup>

NOTE A

INFANCY.

Fiske, *Essays of an Evolutionist*, chapter xii., *The Meaning of Infancy*.

ASSOCIATION AMONG ANIMALS.

Kropotkin, *Mutual Aid a Factor of Evolution*, New York, 1902, chapters i.-ii.

PARENTAL CARE AMONG ANIMALS.

Sutherland, *The Origin and Growth of the Moral Instinct*, chapters ii.-v.

THE LAWS OF MULTIPLICATION.

Spencer, *Principles of Biology*, ii., Part vi.

<sup>1</sup> Lecture III.

<sup>2</sup> Infanticide exists among the lower animals, but is an unusual and more or less pathological fact. Féré: *L'Instinct sexuel*, Paris, 1899, pp. 62-65.



## LECTURE II

### THE DURATION OF PARENTAL CARE AMONG MANKIND

Length of human  
gestation

THE nine months' gestation period of the human mother is, in proportion to weight, the longest known. The natural lactation period of three or four years is also the longest known.

Artificial short-  
ening of lactation  
period  
Not usual among  
lower type of hun-  
ters and fishers  
Usual among herd-  
ers and tillers of soil

Where the food supply consists of roots, berries, insects, fish, or game, lactation continues as long as the milk supply lasts,—for three or four years.<sup>1</sup> Even older children are occasionally suckled. Among herders or tillers of the soil, the milk of domestic animals or cereals are substitutes for mother's milk, and the lactation period is from three to two years or even less.<sup>2</sup> Modern milk analysis has made possible the modification of cow's milk and the preparation of other foods in such a way that infants may be artificially fed from birth.

Entirely artificial  
feeding

Wet-nursing and  
fosterage

Among superior economic classes the employment of a foster-mother or nurse is not uncommon. Among groups where economic classes are not to any extent differentiated, nurslings are sometimes suckled by foster-mothers<sup>3</sup> on the death of the natural mother; more commonly, however, they are killed.<sup>4</sup>

Social causes of dis-  
use of function

Lacteal inability of the mother due to habits of

<sup>1</sup>See p. 268.

<sup>2</sup>See pp. 279, 299.

<sup>3</sup>See p. 250.

<sup>4</sup>See p. 45.

dress or unwholesome ways of living in general, unwillingness due to socially tolerated indolence or personal or class vanity, incompatibility between conditions of labour and suckling, the belief that lactation prevents conception,<sup>1</sup> the custom of sexual abstinence during the lactation period,<sup>2</sup> are the chief social causes of the disuse of this maternal function.

Like other practices, the practice of lactation in any community may vary from class to class or a uniform practice may result from different motives.<sup>3</sup>

In the modern industrial community, for example, where lactation for eight or nine months followed by artificial feeding is known to be the best routine, mothers in the wage classes frequently nurse their infants, because of ignorance, poverty, or the desire to prevent conception, for a period of two years or more. On the other hand, mothers in the capitalist classes may not, because of ignorance or indolence, nurse their infants at all. Again, entirely artificial feeding is not uncommon in the lower economic classes; but when it occurs it is usually due to the exigencies of the wage-earning occupations, including wet-nursing, engaged in by the mothers.

Variations in lactation habits from class to class

Example from modern industrial community

<sup>1</sup> See p. 50.

<sup>2</sup> See pp. 95, 96.

<sup>3</sup> Whenever economic or cultural classes are differentiated, it is extremely important, in observation of the societies to which they belong, to note class variations of belief, practice, or custom. All cultural stages, for example, are probably represented in any modern civilisation. Failure in discrimination along this line, a failure to which democracy is particularly prone, is responsible for many social mistakes, legislative, philanthropic, etc. For primitive family practices and habits in civilisation, see p. 34, Note A, (Verrijn, Booth, Rowntree); p. 34, Note A, (Wright, Rowntree); p. 34, Note A, (Wolf, Booth); and for class differentiation in general in civilisation, see Giddings, *Inductive Sociology*, pp. 249-264.

Need of observation  
of lactation habits

It is unfortunate that information about habits of lactation is so scant. Facts about the regularity and amount of feeding, the physical habits of nursing mothers, the feelings and beliefs of mothers about the function,<sup>1</sup> should be carefully noted, both by ethnographers and observers of civil societies. These facts are essential to any comprehensive study of maternity or of public health and education.<sup>2</sup>

Duration and nature of parental care among mankind in general

Among mankind, as among the lower animals, the duration and nature of parental care in general more or less correspond to the period and degree of immaturity characteristic of the offspring, which, in turn, more or less correspond to the nature of the environment.<sup>3</sup> Where the forms of food and shelter in use are supplied, for the most part, directly by nature, such as roots, seeds, berries, fruits, shell-fish, etc., and caves, trees, rude huts of bark or wood, children from seven to ten years old, or even younger, in some cases soon after they are weaned, may begin to provide for themselves. Where, on the other hand, the habits of satisfying physical wants are more or less elaborate, depending upon speed, strength, endurance, cunning, foresight, self-control, persistence, in hunting, fishing, cultivating the soil, handicraft, cattle raising, or trade, offspring may be economically dependent upon parents up to all ages from ten to twenty. With the growth of knowledge and of specialisation, the production of certain social values, as in all the so-called learned professions of to-day, for example, requires ever-increasing degrees of intelligence and

Early economic independence of offspring

Postponement of economic independence of offspring

<sup>1</sup> See p. 96 .

<sup>2</sup> The recent British Inter-departmental Committee on Physical Deterioration has borne witness to this statement. *Report*, London, 1904, pp. 50, 51.

<sup>3</sup> By environment we mean the *social* as well as the natural surroundings.

training. This class of producers may even have to depend on parental support or its substitutes until the age of twenty-six or twenty-eight.

Economic progress is accompanied by increase of size in the group of associates and by increase of complexity in their social organisation, and social relations requiring forethought, self-control, and a high degree of sociability develop. Although parents are not always the direct agents in this social education, nor are they always for that matter in strictly economic education, nevertheless prolonged social education tends to prolong filial dependence.<sup>1</sup> Parents may, for example, be called upon to defray both the direct and indirect expenses of social education, *i. e.*, fees of initiation or membership in social organisations, and the cost of maintenance in general during the acquisition of social experiences.

Social education

Separate residence in special quarters for youth, marriage, so-called *initiation* or majority ceremonial, independent property-holding, political privileges, indicate the beginning of independence of parental care.

Facts indicative of independence of parental care

It is not uncommon for boys below puberty, and, although much less frequently, for girls below nubility, to live or sleep together in separate dwellings. They may continue to be more or less dependent for food and other things upon their parents. The separate residence of the marriageable youth of both sexes (again a much more frequent circumstance in the case of males than females) in separate houses, often organised as *club-houses*, is a still more common

Separate residence

<sup>1</sup> Exceptions occur in societies where military and ecclesiastical classes are highly differentiated.



arrangement. We find all kinds and degrees of home-leaving, from this formal arrangement to a more or less fortuitous "setting out to seek one's fortunes." On the other hand, parents and offspring may continue to live in the same dwelling long after the latter are mature. We shall consider this fact of common residence later in connection with the compound family.<sup>1</sup>

Customary age at marriage

In this, as well as in other connections, the customary age<sup>2</sup> at marriage is an important fact. Marriage frequently indicates the separate establishment of youth or maiden. Membership in a compound family, as we have seen, however, precludes separate residence at marriage as well as at other times. We should note that in marriage by service<sup>3</sup> the bride continues to live for a time under the care and protection of her parents. Parental care often extends to non-resident married daughters and the maltreated or deserted wife often returns to her parents. Sometimes protection of this kind, however, is rather to be classed as a function of kinship, like

<sup>1</sup> See p. 277.

<sup>2</sup> The age at which puberty or nubility is reached is naturally an important factor in determining age at marriage. It varies with girls from eight or ten to eighteen or twenty years of age. The corresponding period with boys is two or three years later and there is probably in their case less variation, development usually occurring between the ages of fourteen and eighteen. The causes behind this range of age are still obscure. See Ploss and Bartels, *Das Weib*, i., 362-381, also Marro, *La Pubertà studiata nell'uomo e nella donna*. Turin, 1901, chap. i. Their determination would be of immense significance to anthropology in general and to the history of the family in particular.

We should note that the age at which reproduction begins is often to be distinguished from the age at marriage, an important fact in considering the duration of infancy. Even when marriage occurs after nubility it may be customary to delay maternity for several years. Strictly speaking (see p. 120.) such a relation is not marriage.

<sup>3</sup> See p. 62.



common residence in the compound family, than as an expression of parental care.

Initiation or majority ceremonies are extremely significant in the study of culture in general, and in that of education and of family structure in particular. They are, as a rule, suggestive of the personal traits thought to be necessary to successful manhood or womanhood in the given group. Candidates may be tested in speed, endurance, courage, and self-control. At this time special group traditions of a secret nature are generally imparted to the young people. Economic training and social instruction in general are often part of the initiation ceremonial. Bodily mutilations, tattooing, scarification, nose, lip, or ear piercing, circumcision, etc., are suffered, or special ornaments or garments adopted. At this time taboos on eating or hunting certain kinds of game may be removed. The youth frequently is not allowed to marry or claim independent religious, juridical, or political rights until his initiation. Although he may not become independent of his father or male kinsmen at initiation, he invariably becomes independent of his mother. Thereafter he lives more or less separated from her and from his other female relatives.<sup>1</sup> His club-life often begins at this time. Initiation may take place at puberty or several years later, at 18, 20, 21, etc. A sub-initiation, so to speak, or a preparatory ceremonial sometimes occurs also before puberty. Again the ceremonies may stretch over several years. The definite time of celebration, *i.e.*, the determination when the candidates have reached

Initiation of  
youth

Age at initiation

<sup>1</sup> See p. 98.

Difference in  
ceremonial accord-  
ing to sex

puberty, for example, may be decided by relatives, by the father, older brother, etc. Because of the usually larger group tradition to which the boy is initiated his initiation ceremonial is almost always more elaborate than the girl's. Sometimes there is no initiation ceremonial for girls at all.

Age-classes

Social distinctions between children under puberty, youths and maidens over puberty, but unmarried, and married men and women are frequently so marked that initiation and marriage, or, rather, child-bearing,<sup>1</sup> serve as dividing lines of three more or less sharply differentiated *age-classes*.

Prolongation of  
filial dependence  
in ethnic society

It is important to note in general, as well as in the particular cases of residence referred to above, that parental care during immaturity and dependence upon, or subjection to, parents are not always correlative.<sup>2</sup> In ethnic society, *i. e.*, groups whose fundamental social tie is the possession of common blood, dependence on parents *and other relatives* is not limited to the period of immaturity; it tends to be lifelong. Again, filial subjection may also be lifelong when parents occupy the position of governors of kinship groups. In any attempt to follow out the stages of parental care among mankind it is very important to bear distinctions between kinship and parental or filial obligations clearly in mind. We shall find that the former tend in social progress to lessen and the latter

<sup>1</sup> Freedom of sexual intercourse is frequently allowed the unmarried youth and maiden. It is the birth of a child, therefore, that marks the woman's entrance into the third age-class. Men enter it, as a rule, much later than women.

<sup>2</sup> The distinction is striking in Roman law. A son delivered from *patria potestas* by the death of his father or grandfather remained under guardianship only until his fifteenth year, otherwise the *patria potestas* was lifelong.

to increase. Unfortunately ethnographers too commonly fail to make the distinction.

As far as we can judge from our scant ethnographical data and from a few careful studies<sup>1</sup> of the economic and cultural classes of civil societies, diminutions in the number of births and child-deaths per family accompany advances in parental care from society to society or from class to class in the same society. No attempt has as yet been made to analyse this fact from a physiological point of view, and social factors so complicate the subject of the natural fertility of mankind that such an attempt would be very difficult. It is to be hoped that in time, however, a comprehensive study of the relations between birth and child-death rates and parental care among mankind will be made. In the next lecture we shall consider some of the social facts which affect the number of births and child-deaths per family.

Parental care and the number of births and child-deaths per family among mankind

Need of study of relations between fertility, child-mortality, and parental care

#### NOTE A.

##### CUSTOMS OF CHILD-FEEDING.

Ploss, *Das Kind in Brauch und Sitte der Völker*, Leipzig 1884, ii., 141-192.

##### LESSONS IN INFANT AND CHILD-FEEDING.

Holt, *The Care and Feeding of Children*, New York and London, 1903, pp. 35-115.

##### INITIATION CEREMONIAL.

Schurtz, *Altersklassen und Männerbunde*, Berlin, 1902, pp. 95-110.

Garcilasso de la Vega, *The Royal Commentaries of the Incas*, Pub. of the Hakluyt Society, London, 1871, ii., 167-180.

Crawley, *The Mystic Rose*, pp. 294-314.

Ploss, *Das Kind*, etc. ii., 411-451.

<sup>1</sup> See Note A, p. 34.

## TOTEM PRACTICES AT INITIATION.

Frazer, *Totemism*, Edinburgh, 1887, pp. 38-43.

## INITIATION CEREMONIAL, EPHEBIC EDUCATION, AND CHURCH CONFIRMATION.

Hall, *Adolescence*, New York, 1904, chap. xiii.

## AGE CLASSES.

Schurtz, *Altersklassen*, etc., pp. 125-173.

## NATALITY AND CHILD-MORTALITY AMONG DIFFERENT ECONOMIC CLASSES IN THE NETHERLANDS.

Verrijn, *Untersuchungen über die Beziehung zwischen Wohlstand, Natalität und Kindersterblichkeit in den Niederlanden* in *Zt. f. Socialw.*, x. (1901), 49-62.

## IN LONDON.

Booth, *Life and Labour in London*, London and New York, 1903, x., 16-26.

## AMONG COLLEGE- AND NON-COLLEGE-BRED WOMEN IN THE UNITED STATES.

Smith, *Statistics of College and Non-College Women in Publications of the American Statistical Association*, vii. (1900-1901), 1-26.

## DEATH-RATE AMONG POOR CHILDREN OF YORK.

Rowntree, *Poverty, a Study of Town Life*, London, 1901, pp. 205-207.

## NOTE B.

## THE RELATION BETWEEN SOCIALITY AND THE FAMILY.

Social sympathy takes its rise in the family. Sutherland, *The Origin and Growth of the Moral Instinct*, i., 353-354.

Sociability is a product of non-familial relations, Schurtz, *Altersklassen und Männerbünde*, pp. 18-21.

Social life the cause, not the effect, as Fiske suggests, of the prolongation of infancy. Giddings, *Principles of Sociology*, New York and London, 1896, p. 229.

No relation between education (adaptation to social environment) and family structure. Barth, *Die Geschichte der Erziehung in soziologischer Beleuchtung in Vierteljahrsschrift für wissenschaftliche Philosophie u. Soziologie*, Sec. Series, ii. (1903), pp. 57-80, 209-229.

## NOTE C.

Study from ethnographical data the number of births and child-deaths (including artificial abortions) per family in relation to parental care. [Follow here and elsewhere whenever possible the comparative method suggested by Tylor in his *On a Method of Investigating the Development of Institutions*, etc., in *J. A. I.*, xviii., pp. 256 ff., and used by Steinmetz (*Ethnologische Studien zur ersten Entwicklung der Strafe*) and Niebohr (*Slavery as an Industrial System*).] Study lactation habits from the point of view of education (regularity, control, etc.). Study the relation between father and son in the military and ecclesiastical classes of groups (1) where military and ecclesiastical functions are not hereditary, (2) where they are hereditary. Make a comparative study of initiation ceremonial (1) noting the traits required of candidates, (2) the parts played by parents and near kindred. Describe the "coming out party" as an initiation ceremony. Make a comparative study of the difference in age of males and females upon their respective entrance into age-classes. Collect data in addition to foregoing bearing upon query: Is man's infancy longer than woman's?

NOTE D.<sup>1</sup>

## VEDDAHS:

Children live with parents until marriage. p. 471. Youths marry usually at 13 or 14, girls at 11 or 12. They are mothers at 14. p. 469.

Offspring even when grown seem attached to parents. p. 469.

## YAHGAN.

Period of lactation generally 3 years, but solid food—cooked muscles, fish, etc.—is also given at an early period to nurslings. vii, 195. Two children, born one after the other, are often nursed at same time. vii, 171.

Children do not always live with parents. They may be carried off by a friend and live away from parents for weeks. vii, 171. Ordinarily, all the children live together in a little hut which

<sup>1</sup> The full titles of the authorities from which the citations in this note and in the analogous notes at the end of each lecture are taken are to be found in the list of authorities on pp. 1-4. References are to the authorities that are starred.



they build, but their parents furnish them provisions; and when a band of natives come together from different parts, children live altogether with parents for protection. vii., 171.

Parents generally care for children until latter marry. x., 331. Before she is definitely given to her future husband, a girl will go from time to time to visit him, returning to her parents; but as soon as she reaches nubility her lot is settled, for fathers think it dishonourable to keep daughters after this period. vii., 171. Nubility takes place at 14 or 15. vii. 187. Girls marry at 13. H. & D., vii., 377.

Formerly an initiation of boys at the age of adolescence, 13 or 14, customary. They were taken into a large hut, and pledged to secrecy, forced to fast to emaciation, to undertake laborious task of keeping up fire in large hearth in hut. Meanwhile relatives admonished them to behave well. Singing, dancing, and masking took place. After initiation youth had the right to marry. Women and children not admitted to hut. H. & D., vii., 377. Initiation of boys *repeated several years* and then they have a right to marry. vii. 175. Girls fast at puberty and are admonished by parents. H. & D., vii., 377.

#### CENTRAL AUSTRALIANS:

Suckling often continued up to age of 3 years or even older. p. 264.

Marriageable age is usually about 14 or 15. p. 92.

First initiation ceremony takes place when a boy is between 10 and 12. p. 214. His elder male relatives (usually elder brothers) decide when he has arrived at proper age for circumcision. p. 218. While boys are being painted in first of initiatory ceremonies they are told that ceremony will promote their growth to manhood, and they are also told by tribal fathers and elder brothers that in future they must not play with women and girls, nor must they camp with them as they have hitherto done, but henceforth they must go to the camp of the men. Up to this time they have been accustomed to go out with the women as they searched for vegetable food and smaller animals such as lizards and rats; now they begin to accompany the men in their search for larger game, and begin also to look forward to the time when they will become fully initiated into all the secrets of the tribe. pp. 215-17. The throwing of the boomerang

in the direction of the mother's Alcheringa camp during the initiation ceremony may in all likelihood be regarded as intended to symbolize the idea that the young man is entering upon manhood and thus, is passing out of the control of his mother and into the ranks of the men. p. 259. During initiation ceremony, boy's *Mura tualcha*, the woman whose eldest daughter, born or unborn, has been assigned to him as his future wife, hands him the fire-stick, telling him to always hold fast to his own fire, in other words not to interfere with women assigned to other men. p. 222.

If two men are fighting, mother and sister of each will cluster around him, attempting to shelter him from the blows of his adversary's boomerang or fighting club, frequently receiving the blows meant for him. p. 32.

#### POINT BARROW ESKIMO:

Children nursed until 3 or 4 years old. Probably due to fact that animal food on which parents subsist is not fit for young children. p. 415.

Child carried naked on mother's back under her clothes until able to walk and often later. pp. 415-416. Boys of 6 or 7 begin to shoot small birds and animals and hunt for birds' eggs, and when 12 or 14 usually entrusted with a gun and seal spear and accompany fathers to the hunt. One boy not over 13 had a seal net set like the men's and used to visit it regularly even in the roughest weather. Lads of 14 or 15 are sometimes regular members of the whaling crews. p. 417. There were a number of boys who were excellent seal hunters and even able to manage a *kaiak*, but their lips were not pierced until 14 or 15, when they may be supposed to have reached manhood. p. 144. Little girls learn to sew and by the time they are 12 they take their share of the cooking and other household work and assist in making clothes for family. p. 417.

First time a child is taken into a *Kashim* in village of its parents latter present a gift to each person present. p. 286.

#### BEHRING STRAIT ESKIMO:

In child marriages husband enjoys the rights of other heads of families one month after wife reaches puberty. p. 292. Should a considerable time pass after a girl reaches puberty and no suitor appear, the father accumulates a large amount of food and

makes a festival to announce that his daughter is ready for marriage. p. 291.

#### CENTRAL ESKIMO:

Children weaned when about 2. During this time frequently fed from mothers' mouths. p. 556.

Young children always carried in mothers' hoods, but when about a year and a half old allowed to play on the bed and carried by mothers when they get too mischievous. pp. 565-566. Children when about 12 begin to help parents, girls sewing and preparing skins, boys accompanying fathers on hunting expeditions. p. 556.

As soon as a boy is able to provide for a family and a girl can do the work falling to her share they are allowed to marry. pp. 578-579.

#### MELANESIANS:

Children commonly suckled until they can crawl. p. 231.

New Hebrides: Membership in the powerful secret society is a matter of payment. A father will purchase it for son. pp. 87, 114, 115. Banks' Isls.: A boy without property will be supplied by father or some friend with what is necessary for engaging patronage of his uncle, upon whom the expense of his initiation into the secret society, *Suge*, falls. p. 106.

Boys sleep and eat in a public hall or in club-house of secret society. Saa: A chief's son may go to eat at club-house, subsequently to sleep there, at 12, commoners' sons go later. pp. 231-233.

#### EWE-SPEAKING PEOPLES:

Children suckled ordinarily 2 or 3 years. p. 206.

Boys remain under care of mother until old enough to be of service to father, when they leave maternal roof and live in father's house. Girls remain with mother until married. p. 204.

TSHI-SPEAKING PEOPLES. See Note D, p.

#### YORUBA-SPEAKING PEOPLES:

Suckling lasts usually 3 years. p. 185.

At death of father daughter laments: "Alas! my father is dead. Who will take care of me?" p. 158.

#### THOMPSON RIVER INDIANS:

Little care taken of children during a certain age. From their

birth until able to walk generally wrapped up, and even taken too much care of ; but as soon as they can walk, and from that time up to 10 often allowed to run around exposed to weather, with little or no clothing other than a cotton shirt. It is during this period of life that most children die. pp. 177-178.

Girls considered marriageable only after puberty ceremonies, approximately in 17th or 18th year. Sometimes ceremonies continued until 23d year. p. 321. Most of the men married from 3 to 7 years after puberty ceremonial, *i. e.*, between 22 and 25. p. 321.

Adolescent boys commenced regular training when they dreamed for first time of an arrow, a canoe, or a woman, generally between 12 and 16. p. 318. Ordinarily boys went to lonely parts of mountains, remaining from 2 to 10 days at a time. If weather were good, they generally stayed away a month or two at a time, living on what game they shot. Sometimes they fasted many days. In the sweat lodge they prayed to be made physically strong, agile, wise, brave, lucky, wealthy, good hunters, trappers, fishermen, etc. Also that they might never be bewitched, sick, poor, lazy, easily tired, etc. They jumped over sticks or bars, ran up and down hills as swiftly as possible without stopping. They practised shooting at marks. They made round holes in rocks with a jadeite adze, working every night until holes were two or three inches deep. This was believed to make the arm tireless and the hand dexterous in making stone implements of any kind. pp. 318-320. Puberty ceremonies which boys had to perform depended upon their aspirations. Those who desired to become great hunters had to practise hunting and shooting in a ceremonial way. Those who desired to be warriors performed mimic battles. The would-be gambler danced and played with gambling sticks. If a boy wanted to develop into an extraordinary man, ceremonial extended over years, which he spent alone with his guardian spirit in the mountains, fasting, sweating, and praying. pp. 317-318. Lads who had shown themselves skilful in hunting were called "grown" in the sense that they had attained manhood; whereas others, although adults, not called "grown up" unless they had so distinguished themselves in hunting or war. p. 295. During puberty ceremonial a girl had to run as fast as she could, pray at the same



time to the Earth or Nature that she might be fleet of foot and tireless of limb. She split small fir trees in two from top to bottom, that she might be strong of muscle and body. She dug trenches, that she might be capable of doing a large amount of digging and other hard work. She also wiped her eyes and her face with small fir branches, that she might be good looking. pp. 312-313. She stroked her back and head with a hemlock branch, praying that those members might never get tired when carrying heavy burdens. She stroked her legs and feet, that they might never get tired when travelling long distances. She prayed that she might never be lazy, but always quick and active at work. She had to make miniatures of every article which women were in the habit of making, that in after years she might be capable of making those articles properly—baskets of roots and birch bark, mats of different kinds, rope, thread, etc. p. 315.

#### KABYLES:

Imechaddalen. Tax on birth of a son 3 reals. Father also gives a feast to the village 7 days after birth. iii., 417. Izerfaonen Likewise when he circumcises his son. When a child begins to fast (at majority) father gives a dish of *concous* to the mosque for the people. iii., 410. Cheurfa. If a father fail to have his son taught to read after one year has elapsed from cutting of his second teeth, fined 1 real. iii., 330-331.

A father may marry off his daughter before she has reached age of puberty. ii., 149.

A married woman may choose her father or another relative as guardian of her interests. Has right to visit her relatives when they invite her to attend important events in family. Her father has always the right to take her home. ii., 168-169.

#### ANCIENT ARABS:

Mothers must suckle their children two whole years for one who wishes to complete the time of suckling; and on him to whom it is born its sustenance and clothing are incumbent; but in reason, for no soul shall be obliged to go beyond its capacity. But if both parties wish to wean, by mutual consent and counsel, then it is no crime in them. And if ye wish to provide a wet-nurse for your children, it is no crime in you when you pay what you have promised her, in reason. ii., 233.



## ANCIENT HEBREWS

If the priest's daughter be a widow, or divorced, and have no child, and is returned unto her father's house, as in her youth, she shall eat of her father's meat; but there shall no stranger eat thereof. Lev. xxii., 13. A man was *numbered* at 20 years of age. Ex. xxx., 14.

## BABYLONIANS:

If a man give his son to a nurse and that son die in the hands of the nurse, and the nurse substitute another son without the consent of his father or mother, they shall call her to account, and because she has substituted another son without the consent of his father or mother, they shall cut off her breast. § 194.

## ANCIENT HINDUS:

The initiation should be performed for a Brâhmana from 5th year after conception until completion of 16th year; for a Kshatriya, in 11th year to completion of 22d year; for a Vaisya, in 12th year to completion of 24th year. If these periods pass without initiation men become despicable outcasts. ii., 36-40.

## ANCIENT CHINESE:

The tortoise shell was employed to determine the wife of an officer or the concubine of a great officer who should be the nurse of a ruler's son. xxvii., 472. This nurse quitted palace at end of 3 years. Son of a great officer has also a nurse. Wife of an ordinary officer nourished her child herself. xxvii., 476.

Confucius said: "A son, three years after his birth, ceases to be carried in the arms of his parents." xxviii., 394. To a question about the son of a common man, the reply, if he be grown up, should be, "He is able to carry a bundle of firewood." xxvii., 115.

At 20 he was capped and first learned the different classes of ceremonies . . . and attended sedulously to filial and fraternal duties. . . . At 30 he had a wife, and began to attend to the business proper to a man. . . . At 7 boys and girls did not occupy the same mat nor eat together. A girl at 10 ceased to go out from the women's apartments. At 15 she assumed the hairpin; at 20 she was married, or, if there were occasion for the delay, at 23. xxvii., 477.

## ANCIENT ROMANS:

Ascendants may appoint tutors by testament to those children who are in their power, though if males, only whilst under the age of puberty, but females may be above the age of puberty, for the ancients wished that women, even of full age, should, on account of their weakness of intellect, be kept in guardianship. *G. i.*, §144. According to Justinian, daughters as well as sons have tutors appointed to them only under the age of puberty. *ℳ. i.*, *xiii*, §3. Between puberty and 25 curators are appointed for both males and females, for "they are still of an age which makes them unfit to look after their own affairs." *ℳ. i.*, *xxiii*. For cutting or pasturing off crops at night, death; but if the offender be under the age of puberty scourging by order of the magistrate and liability for double the amount of damage. Table VIII. Similarly for theft. *ib.* In theft a person under the age of puberty can only be liable if he is approaching the age of puberty, and, consequently understands that he is doing wrong. *ℳ. iv.*, *i*, §18.

Marriage is lawful when the male has reached the age of puberty and the female the age when she is fit to be married (12). *ℳ. i.*, *x.*, *xii*.

## FRENCH:

338. A minor is an individual of either sex who has not yet reached full age of 21. 476. A minor is emancipated by right of his marriage. 477. A minor even unmarried can be emancipated by his father, or, in default of his father, by his mother when he has reached the full age of 15.

144. A male under 18 and a female under 15 cannot contract marriage. 145. Nevertheless the King (the President of the Republic) may grant dispensations on account of age for serious causes.

## PEOPLE OF UNITED STATES:

Statute 43 Eliz. and statutes based upon it alone govern in regard to parental maintenance. § 237. Endangering a child's life from want of food or medical treatment an indictable offence. § 244 N. 6.

Age at majority, 21; for females, in some States, 18. § 391. The prevailing policy is to exclude the testamentary capacity of all infants. § 397.

A child under 7 is legally incapable of crime, one between 7 and 14 only *prima facie* so, and one over 14 *prima facie* capable like any other person. § 395.

Marriage may be contracted at 7 and may be affirmed or avoided at the age of consent, from 14 to 21 for males, from 12 to 18 for females. § 20 N. 1.

A father is not only absolved from liability for sheltering his daughter who has fled from a drunken and profligate husband, but he is even encouraged to do so. § 41.

## LECTURE III

### SOCIAL FACTORS IN BIRTH AND CHILD DEATH RATES

Artificial and direct  
checks upon human  
fertility

Their time relations  
to one another

Psychological  
distinctions

Causes of  
infanticide

THROUGH infanticide, artificial abortion or foeticide, and the prevention of conception natural fertility is artificially and directly checked. These checks exist synchronously in a society in the same or, more commonly, in different culture classes, or one may, in course of development in general in the society, be substituted for another. There are less forethought and parental sympathy in infanticide than in foeticide and in foeticide than in the prevention of conception. In all cases of comparison, however, the particular motives and methods of the general practice must be considered. The prevention or attempted prevention of conception, through magic or mechanical means, to avoid the burden of an additional child corresponds, for example, to quite a different cultural stage than prevention through self-restraint for the sake of caring more adequately for existing offspring and of becoming more fit for child-bearing at a later period. Natural or non-social conditions making for a high infant death-rate are also to be noted in this connection as precluding ideas of the necessity for infanticide.

Among the chief causes of infanticide are the inability of the mother, either through death or the existence of an older child, to suckle or carry the newcomer, the death of the father, or desertion by him of his family, poverty in general, maternal indolence, the

## Social Factors in Birth & Child Death Rates 45

rule of sexual abstinence during lactation, fear of the unusual, prejudice against illegitimacy.

Infanticide of the surviving infant of a mother dying in child-birth or while the child is at the breast is a common practice. In this case it is sometimes believed that the spirit of the mother demands the company of her child. Where infants are absolutely dependent upon their mothers' milk and where the period of lactation is long, it frequently happens that a child is born before an older child is or can be weaned. If the mother can not nourish both, the younger is killed. Akin to this motive is the killing of a younger child in the belief that his vitality will pass into the body of an older and ailing child. Lack of adequate nourishment is probably one of the reasons at times for the widespread practice of killing one of twins. Where among migratory peoples the wife and mother is the chief carrier of the household, it is plain that she can not carry two children in addition to household goods. And here again is a motive for doing away with the younger burden. The death of the father, or desertion by him of his family, is also a motive for infanticide by the mother. Where child-labour is useful among herders and tillers of the soil, for example, or in industrial groups where child-labour is unrestricted, or in the case of daughters where marriage by purchase is customary, children are desirable as a form of present or future wealth. Under other circumstances they may burden their parents without bringing them any economic return. Infanticide is an expression of the irksomeness of this condition. The unwillingness of mothers to nurse their children we have already referred to. This attitude,

Death of mother

Newcomer interferes with care of older child

Killing of one of twins

Infanticide due to migratory nature of group

Death of, or desertion by, father

Lack of economic returns from offspring

Maternal indolence



Jealousy

Intolerance of the  
unusualArbitrary notions of  
bad-luck

Illegitimacy

Infanticide of twins

Of the first  
offspring

whether it be due to mere indolence (in which case it is coupled to unwillingness to care for the child after it is weaned as well), or to the fact that the lactation period is usually the time when, under polygyny, the plural wife is taken,<sup>1</sup> also leads to infanticide where the mother is the sole provider for the infant. Undeveloped persons and groups are, as a rule, extremely intolerant of individual variations.<sup>2</sup> This attitude expresses itself in the superstitions usually attaching to the unusual or unexpected; the abnormal is accounted good- or bad-luck-bringing, more frequently bad-luck-bringing. Irregularities in the birth or growth of children, such as premature birth, multiple births,<sup>2</sup> abnormal delivery, irregularity in the order of dentition, bodily defects or disease (here economic motives may attach, too), etc., are all ill omens to be averted only by the killing of the offspring characterised by such irregularities. Purely arbitrary notions of bad luck attaching, for example, to certain times of birth or to certain positions in the order of births in a family also lead to infanticide. The offspring of condemned or forbidden forms of sexual intercourse are frequently killed, either as a means of concealing the offence and so avoiding disgrace or punishment, or because their death is directly required by the group. The killing of twins is sometimes due to the idea that they are the outcome of adultery. It is sometimes customary to kill the first child or children that are born before the mother has reached a stated age or has been married a stated time. This practice is sometimes due to the

<sup>1</sup> Cp. p. 104.

<sup>2</sup> Even when infanticide is not practised in the case of twins, their treatment is, as a rule, somewhat different from that of other children, their coming being considered either unfortunate or auspicious.

belief that the children of very young mothers are weakly. On the other hand, all children born after the birth of a second, third, etc., child may be killed.

Female infanticide is sometimes the only practice of infanticide in vogue. This may occur when the potential economic value of females is much less than that of males. Where marriage by capture is common, the possession of girls may also be a source of group weakness, inducing attacks by other groups.

Burial alive, a blow, suffocation, drowning, are some of the methods of child-killing. *Exposure* is an interesting modification of infanticide proper, as it indicates an increase of parental sympathy.<sup>1</sup> The foundling asylum is an index of the prevalence of what approximates to this practice in modern civilisation.

Almost all of the causes of infanticide may be operative in the practice of foeticide. Indolence, personal vanity and fear of disgrace in case of illegitimacy are, however, more prominent motives in the latter than in the former practice. Foeticide may also be practised because of sexual abstinence restrictions during pregnancy, or as a means of spiting a disliked husband. Its practice as a means of saving the life of women unable to live through pregnancy is due to modern surgery and to the belief that it is more important to save the life of the mother than of the infant.

The practice of infanticide or of foeticide may be optional with the mother, or the consent of the father

<sup>1</sup> That is, in the attitude of the group in general, not necessarily in individual cases. The same distinction should be borne in mind in the comparison we have already made of the psychical characteristics presupposed by infanticide, foeticide and prevention of conception. (See p. 44)

Of subsequent offspring

Female infanticide

Causes

Methods of infanticide

Causes of foeticide

Special motives

Restrictions upon infanticide and foeticide

Assimilated to  
murder

or other members of the kinsfolk group may be required. The father or, in the case of illegitimacy, the kinsfolk may also insist upon the deed. Infanticide comes very gradually, and long after the notion of the sanctity of human life in general has been established, to be assimilated to murder and to be punished by fine, imprisonment, or death. In this connection it should be noted that, even in communities where the practice is otherwise unrestricted, it is almost always customary to kill the infant during the first few minutes or hours of life. In some cases, unless it is killed within a specified time or before it is named or lifted up, *i. e.*, recognised by the father, it must be allowed to live. Beliefs and practices connected with unlucky children may in some cases be modifications or survivals of an original practice of infanticide. The recognition of foeticide as, in all cases except as a necessity for saving the mother's life,<sup>1</sup> an unjustifiable and punishable act is naturally a still later view. The belief that the foetus is not alive until a certain period of pregnancy is reached frequently prevents the practice of abortion prior to this period from being condemned.

Condemnation of  
foeticide later than  
that of infanticide

Facts indicative of  
desirability of off-  
spring

It is important to note, in connection with a study of the practices we have been considering, as well as with a general study of parenthood and of marriage,<sup>2</sup> all facts indicative of the degree of desirability of offspring. It is enough at present to mention these facts. We shall discuss them in other connections later. These facts are : (1) cost of bringing up offspring ; (2) the existence of economic returns to parents through child-labour, or the labour of adult sons or daughters,

<sup>1</sup> According to the Catholic Church even this is not a justifying circumstance.

<sup>2</sup> See p. 229.

or through daughter sale in marriage or prostitution; (3) the sale or pawning of offspring; (4) the practice of fertility charms or rites (often only for the birth of male offspring); (5) suspension of legal marriage until birth of offspring; (6) divorce for barrenness; (7) lineal inheritance of rank, property, and religion; (8) practices of adoption; (9) celebrations at birth, or naming ceremonial of child. (There is frequently a marked difference in such celebrations according to the sex of the child. This difference usually suggests the fact that daughters are less desirable than sons.) (10) The existence of state rewards or privileges for married persons or for prolific parents, or of state penalties or disqualifications for celibates (indicating that offspring are not desired by potential parents, but that their value to the group is recognised). Moral or religious exhortations on early marriage or unrestricted reproduction are also to be considered here.

When we have approximately learned from a study of these practices and conditions the degree of desirability of offspring, we may estimate to a certain extent the tendency to purposively check natural fertility. Such knowledge is particularly useful in a study of the habitual prevention of conception. If the tendency is marked and if infanticide and foeticide are strongly condemned in the community, we may expect to find, given an adequate development of physiological knowledge, forethought, and self-restraint, the prevention of conception in general practice. A realisation of the benefits resulting to the mother, to existing and to future offspring, from the lapse of from two to four years between conceptions, may also be the cause of temporarily preventing

Conditions under which the habitual prevention of conception occurs

Advantages consciously secured through temporary prevention of conception



conception. In infanticide and foeticide these benefits were only partially gained, if gained at all. Frequently, as we have seen, existing offspring are protected through infanticide and foeticide, but the mother and through the mother future offspring are in most cases injured. (Infanticide, in so far as it may relieve the mother of the strain of suckling two children at the same time, is of benefit to her.) Accurate information on this subject in general is unfortunately not at present obtainable.

There are additional direct, although non-purposive, checks on the number of births per family which we should note. The custom of requiring sexual restraint during the period of lactation is a check upon the birth-rate. It is also probable, although the evidence on this point is somewhat conflicting, that where no such restriction exists nursing mothers are less apt to conceive during the lactation period and that prolonged periods of lactation permanently decrease the power to conceive. Economic hardship is an important factor in this connection. Women upon whom heavy home or field labours fall are less fertile than those living under easier economic conditions.

Here we may also briefly note certain social factors indirectly affecting the general birth-rate<sup>1</sup> by postponing the age of marriage or limiting the number of potential parents.

The occurrence of unusual economic distress is a

<sup>1</sup> Hitherto we have been considering only data useful in estimating the number of births and child-deaths per family or married woman. In statistical terminology this is called a *refined* birth-rate. The facts we are now to note are useful in an analysis of the proportion of births to the *total* population or in a consideration of the *crude* birth-rate.

Additional direct  
social checks  
on births per  
family  
Sexual restraint  
during lactation

Prolonged lac-  
tation

Economic hard-  
ship

Indirect social  
checks on birth-  
rate

Economic crises



factor in postponing marriage. The statistics of marriage during and after so-called economic crises are plain on this point. Postponement of the age of marriage is, perhaps, in curtailing the child-bearing period and in confining child-bearing to the latter and more unfruitful part of the period, the most important indirect check upon the birth-rate in civilisation. The fact should also be noted, however, that very early marriage (or sexual intercourse during immaturity) is probably unfavourable to a numerous progeny. Advancing standards of living, as well as periods of hard times, tend to postpone the age of marriage. We should note, however, that the first factor has a comparatively permanent and the second, as a rule, a transitory effect. By the so-called law of compensation the birth-rate rises after a period of economic depression. Another form of compensation interesting in this connection, but physiological, so to speak, rather than social, is the tendency for the death of a child, particularly an infant, to bring about the birth of another. We have no exact information here, however. Other indirect social checks upon the birth-rate are unhygienic practices or ways of living during sexual crises, prostitution, religious celibacy, standing armies, depopulating wars and epidemics, lack of numerical proportion between the sexes due to economic conditions, the cost of obtaining or maintaining a wife, the growth in general of desires for economic independence or for luxury and idleness (factors in celibacy, late marriage, or voluntary childlessness), etc.

Late marriage

Very early marriage

Rise in standards of living

Other checks

## NOTE A

## INFANTICIDE.

McLennan, *Studies in Ancient History*, Sec. Ser., London and New York, 1896, chap. vii.

Ploss, *Das Kind*, etc., ii., 243-264.

## TREATMENT OF TWINS.

*Ib.*, ii., 265-275.

## INFANT MORTALITY IN CIVILISATION.

Newsholme, *The Elements of Vital Statistics*, London and New York, 1899, chap. xiv.

## ILLEGITIMACY A FACTOR IN INFANT MORTALITY.

*Report of the Inter-departmental Committee on Physical Deterioration*, London, 1904, pp. 133-4.

## CHILD MORTALITY CAUSED BY MATERNAL NEGLECT.

Jevons, *Married Women in Factories in Methods of Social Reform*, London 1883.

## FETICIDE.

Ploss and Bartels, *Das Weib in der Natur- und Völkerkunde*, Leipzig, 1902, i., 842-852, 863-867.

## UNLUCKY AND LUCKY CHILDREN.

Rose, *Unlucky and Lucky Children and Some Birth Superstitions in Folklore*, xiii., 278 ff.

## EVIDENCE OF DESIRABILITY OF OFFSPRING.

Friedrichs, *Einzeluntersuchungen zur vergleichende Rechtswissenschaft: Familienstufen und Eheformen in Zt.f. Vergleichende Rechtswissenschaft*, x., 219-253.

## ANALYSIS OF BIRTH-RATES.

Mayo-Smith, *Statistics and Sociology*, London and New York, 1895, pp. 63-75.

Newsholme, *The Elements of Vital Statistics*, chap. ix.

## SOCIAL CHECKS UPON POPULATION.

*Ib.*, chapters vii.-viii.

Ogle: *On Marriage-Rates and Marriage-Ages, with Special Reference to the Growth of Population*, in *Journ. of the Royal Statistical Society*, liii. (1890), 253-280.

Levasseur, *La population française*, Paris, 1889-92, ii., chaps. vii.-x.

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Malthus, *An Essay on the Principle of Population*, Bk. IV., chaps. i. and ii. (on postponement of age of marriage).

### NOTE B

#### THE CAUSES OF "RACE SUICIDE" AMONG NATIVE-BORN IN THE UNITED STATES.

Defects of higher education. Hall and Smith *Marriage and Fecundity of College Men and Women in The Pedagogical Seminary*, x. (1903), 275-314.

Not higher education among men. Engelmann, *Education not the Cause of Race Decline in Popular Science Monthly*, lxiii. (1903), 172-184.

Desire of native-born population to maintain its social standards in face of competition by immigrants. Bushee, *The Declining Birth Rate Popular in Science Monthly*, lxiii. (1903), 355-361.

For the controversy on the relation of female infanticide to exogamy see

### NOTE C

Make a comparative study (1) of the treatment of twins, (2) of the infanticide of illegitimate offspring, (3) of the agent in infanticide, father, mother, kinsman, etc., (4) of the person or persons whose consent the agent must obtain. When is and when is not female infanticide a survival of general infanticide? Are infanticide and foeticide found among groups where there is a high infant death-rate due to natural causes? Compile all the obtainable reports of existing foundling asylums in Europe and the United States. Study beliefs and practices in connection with unlucky children.

### NOTE D

#### VEDDAHS:

Women are fruitful, but great majority of children die of fever. In one case, 19 families had only 13 children, 10 couples had none at all. p. 469. Infanticide not practised. p. 469.

#### YAHGAN:

A woman bears rarely more than 6 children because of lapse of time between births. vii., 172. Women bear on average 4

children. vii., 189. It is rare for all her children to live; most of them die young. vii., 172-173. Infanticide not customary. x., 331. If a mother dies, a suckling will soon find a devoted foster-mother. vii., 171. Infants very rarely killed except under special circumstances, *i. e.*, when mother has been deserted by husband, she often kills her child. vii., 169. Offspring called upon to aid old parents. Generally, after a father has passed beyond working age, his son makes him a dug-out every season. If a widower, entirely supported by eldest son. vii., 176. If a child is deformed, or characterised by great physical imperfection, killed very soon after birth. vii., p. 169. If a mother has only daughters, the last arrival is sometimes killed. vii., 169.

#### CENTRAL AUSTRALIANS:

Number of children rarely exceeds 4 or perhaps 5 in a family, and as a general rule, is less still, perhaps 2 or 3. p. 264. Infanticide undoubtedly practised, but except on rare occasions child killed immediately on birth, and then only when mother is, or thinks she is, unable to rear it owing to there being a young child whom she is still feeding. p. 51. Twins are of extremely rare occurrence; usually immediately killed as something unnatural. p. 52.

Believed that spirit part of child at birth goes back at once to particular spot from whence it came and can be born again at some subsequent time even of same woman. pp. 51-52. On one side of the *Erathipa* stone a round hole through which spirit children supposed to be on the lookout for women who may chance to pass near and firmly believed that visiting stone will result in conception. If a young woman has to pass near stone and does not wish to have a child, she will carefully disguise her youth, distorting her face and walking with aid of a stick. She will bend herself double like a very old woman the tones of whose voice she imitates saying "Don't come to me, I am an old woman." p. 337. Spirit children supposed to be especially fond of travelling in whirlwinds, and on seeing one of these approaching a woman will at once run away. p. 125 n. 1. If a man and his wife both wish for a child, the man ties his hair girdle around *Erathipa* stone, rubs it and mutters, "The woman my wife you (think) not good, look." p. 338. A malicious man may

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cause women and even children at a distance to become pregnant by going to the *Erathipa* stone, rubbing it and muttering, "Plenty of young women, you look and go quickly." p. 338.

Possibly sterility in many cases associated with injury received during initiation rite of Arilt hakuma. p. 52 n. 1.

### POINT BARROW ESKIMO:

Families rarely have more than 2 or 3 children, and it is not uncommon for them to have none. p. 29. The women are not prolific; although all adults are or have been married, many of them are childless, and few have more than 2 children. p. 38. No case of infanticide heard of. Children very scarce and seemed highly prized, yet state that a child is destroyed when diseased or in scarce seasons when one or both parents die. pp. 145-47.

Stated that women do not commonly bear children before 20, and no mothers seen who appeared younger than this. p. 39. Unlimited intercourse between white sailors and Eskimo women. This prostitution may have something to do with want of fertility. p. 54.

### BEHRING STRAIT ESKIMO:

Formerly a common custom to kill female children at birth if they were not wanted, and girls were often killed when from 4 to six years old. p. 289. Girls looked upon as a burden because incapable of contributing to food supply of family. p. 289. If a man had a daughter not more than 5 or 6 years old who cried much, or if he disliked her for any reason, or was unable to obtain food for the family, he would expose her. p. 290. In one village where there had been a famine, the bodies of over 200 adults were found, but no children. p. 270.

Infants when killed taken out naked to graveyard and there exposed to cold, their mouths filled with snow. p. 289.

People fear to die unless they have some one to make offerings to their memory, and childless persons generally adopt a child, as people who have no one to make offerings for them are supposed to suffer great destitution in the other world. Regarded as severest punishment possible to have these rites neglected. When a person has been very much disliked, his shade is sometimes purposely ignored. p. 364.

### CENTRAL ESKIMO:

Infanticide has been practised to a certain extent, but probably



only in cases of females or children of widows or widowers on account of difficulty of providing for them. p. 580.

#### MELANESIANS:

Infanticide very common. More prevalent in some islands than in others. Old women generally determine whether a newborn infant shall live; if not promising in appearance or likely to be troublesome, suffocated. Banks' Isls.: If of wrong sex (male children killed rather than female) or otherwise unwelcome, infant choked at birth. p. 229. Ghost of a woman dying in childbirth cannot go to Panoi, paradise, if her child live, for she cannot leave it. They therefore deceive her ghost by laying in her bosom a piece of banana trunk done up in leaves for the child. p. 275. [Perhaps a survival of a former practice of infanticide at death of mother.]

#### EWE-SPEAKING PEOPLES:

The god *Legba* is sacrificed to, to remove barrenness. p. 44. A woman bearing twins is now honoured. Stated that formerly in Whydah such a birth was a scandal as it was thought indicative of adultery. p. 52. According to local report a child born with teeth about 1883 was thrown into sea by order of king because *Buko-no* (divines) declared it was animated by soul of preceding monarch. p. 116.

In Dahomi, by state policy, the Amazons (a military body of about 3000 women) are considered the king's wives. They are sworn to celibacy, and secret death is the punishment of broken vows. pp. 184, 187.

#### TSHI-SPEAKING PEOPLES.

Considered very disgraceful, also a great misfortune, for a woman not to bear children. p. 94. In parts of Ahanta, if a woman has borne 10 children she is obliged to separate from her husband for one year. pp. 284-285. Sacrifices made to the family god to prevent sterility. pp. 92-93. If a mother die in childbirth it is customary to bury living child with her, idea seeming to be that child belonging to the mother should accompany her after death. This custom no longer exists in the colony but is still in force in independent tribes. Until very recently, customary in parts of Ahanta for the tenth child of same mother to be buried alive. (Perhaps a survival of a custom of an older people.) p. 234.

## Social Factors in Birth & Child Death Rates 57

### YORUBA-SPEAKING PEOPLES.

Considered a disgrace not to bear children. Offerings made to the god of fecundity, *Ita*, before marriage. p. 56. Said to be usual in Ondo to destroy one of twins. If true, probably a custom borrowed from Benin tribes to the east, as it is contrary to native practice. p. 81.

### THOMPSON RIVER INDIANS:

In Spence's Bridge band from 1884-94 a very high death-rate, the principal cause of the band's decrease being the great mortality among children. p. 157. Newly born babes were sometimes, but very rarely, killed by strangling or drowning, but women who did so were thought very severely of and publicly reprimanded. p. 305. Sometimes, when a mother died, leaving an infant child, it was wrapped up in a robe and buried alive with mother. Done because, they said, the child would die anyway, and it was often hard to obtain any other woman to suckle it. p. 329. A woman about to be delivered of twins was generally made aware of fact beforehand by repeated appearance of a grizzly bear in her dreams; therefore twins regarded as different from other children, and treated accordingly. Called "grizzly-bear children" or "hairy-feet" children. p. 310.

Abortion rarely practised; effected by drinking of medicine. p. 305.

After-birth taken away and hung up on branch of a tree that no dog or child might touch it. If touched by either, woman would have no more children. p. 304. Barren women desirous of having children ate a roasted mouse of a certain species. pp. 308-309. A young child always buried some distance away from old graves, otherwise its mother would have no more children. p. 330. Buck's penis sometimes eaten by women that they might bear male children. p. 309.

A period of conjugal separation, formerly lasting 3 or 4 months, at present six weeks, follows child-birth. p. 305.

### KABYLES:

Illegitimate children killed. ii., 187. If a mother killed her child against wish of husband, his family exacts the *rek'ba*, blood penalty, of her family. Her *kharouba* may escape all responsibility by giving her over to her husband's vengeance or by

killing her themselves. If infanticide has been committed with husband's consent, a fine only is imposed by village council.

Fœticide classed with infanticide. iii., 64. Seubka. If a wife causes an abortion under her husband's roof, she is killed; if in the house of her relatives, they are responsible, and subject to the debt of blood if the child is a boy, and to payment of composition money if a girl. iii., 439.

#### ANCIENT ARABS:

And slay not your children for fear of poverty; . . . beware! for to slay them is ever a great sin. xvii., 32. When any one of them has tidings of a female child, his face is overclouded and black, and he has to keep back his wrath. He skulks away from the people, for the evil tidings he has heard;—is he to keep it with its disgrace, or to bury it in the dust?—aye! evil is it that they judge! xvi., 60-61. Losers are they who kill their children foolishly, without knowledge, and who prohibit what God has bestowed upon them, forging a lie against God; they have erred and are not guided. vi., 141.

#### ANCIENT HEBREWS:

God said unto them, Be fruitful, and multiply, and replenish the earth, . . . Gen. i., 28 and *passim*.

#### ANCIENT HINDUS:

Libations of water shall not be offered to women who have caused an abortion. v., 89-90.

By procreation of sons the human body is made fit for union with Brahman. ii., 28. A twice-born man who seeks final liberation without having begotten sons sinks downwards. vi., 36-37. He only is a perfect man who consists of three persons united, his wife, himself, and his offspring. ix., 45. Through a son he conquers the worlds, through a son's son he obtains immortality, but through his son's grandson he gains the world of the sun. ix., 137. The sacrificer's *first* wife may eat the middle-most cake at the sacrifice to the manes—if desirous of bearing a son. iii., 262.

There is no sin in carnal intercourse, but abstention brings great rewards. v., 56. Many thousands of Brâhmanas who were chaste from their youth have gone to heaven without continuing their race. v., 159.

ANCIENT ROMANS:

Malformed infants may be immediately destroyed by the father in the presence of 5 neighbours. Table IV.

Free-born women are released from tutorship on the ground of having 3 children; freedwomen, on the ground of having 4 children. *G* i., §194. Under the Twelve Tables there was no right of reciprocal succession between a mother and her son or daughter. By the Tertullian decree of the Senate, a free-born mother with 3 children or a freedwoman with 4 was admitted to take property of deceased intestate children. Justinian abolished the proviso in respect to child-bearing, for "how has she sinned in not having many, but a few, children?" *J.* iii., *iii.*, §§1-4.

## LECTURE IV

### PARENTAL POWER

PARENTAL mastery, ownership, or control is the usual accompaniment of filial dependence. In many communities, the parents or parent (commonly the father) have unrestricted possession of offspring. The child is their chattel to kill at birth or in later life, devour, sell or pawn, give away, make work, offer up in blood sacrifice or in lifelong dedication to deity, abuse, etc., at pleasure. In other communities, on the other hand, this parental absolutism is limited in many ways.<sup>1</sup>

Parental ownership  
or control

Restrictions of par-  
ental power

On power over life  
and death

On selling or pawn-  
ing

We have already seen how the practices of infanticide and fœticide may be restricted or wholly condemned, or prohibited. The right to kill, sell, or pawn offspring may be allowed only under circumstances of filial misbehaviour, or of poverty or indebtedness on the part of the parent. Repeated sale of offspring may entitle the latter to freedom from parental control. Let us note at this point that, although the obligation to pay the debts or fines of parents, or to

<sup>1</sup> Here as elsewhere in the study of the family we must consider our subject in relation to the other conditions that prevail in a given group. In groups where economic or juridical ideas or practices are undeveloped, paternal masters will be very different from the paternal ownership of more advanced groups. Let us not fall into the error of Sir Henry Sumner Maine in believing that the *patria potestas* of the Romans "is necessarily our type of the primeval paternal authority."—*Ancient Law*, 1870, p. 138.



support them when invalid or aged,<sup>1</sup> or the liability to be enslaved by their creditors or to be punished for their misdeeds, may follow in part from the idea of parental ownership, yet such obligations and liabilities may also be part of the general solidarity of kinship characteristic of ethnic society. Similar motives or combinations of motives enter into the responsibility which frequently falls upon parents also for the fines, debts, etc., of offspring. This may be also a corollary of parental ownership merely, offspring who do not control their own product not having the means to be personally liable in such cases.

Mutual liability for fines, debts, etc., partly result of general kinship solidarity

Under well developed ethnic organisation guardianship (protection and control) of offspring may be shared with the parent by a circle of kinsfolk, or it may be with the parent *as the head* of the kinsfolk group or it may be wholly in the hands of the kinsfolk, or head of the kinsfolk. A fuller consideration of these facts we shall postpone to the discussion of types of compound family.

Ethnic organisation and guardianship

Frequently, as we have already seen in the case of infanticide and as we shall soon see in customs of disposal in marriage, parental ownership is much more restricted in the case of sons than of daughters. The right to kill later in life or to sell may, for example, apply only to daughters.

Parental ownership restricted in case of sons

The consideration of parental control as an educational method, in distinction to parental control as the direct outcome of parental ownership, we shall

<sup>1</sup> The obligation to support a widowed mother or unmarried sister may, in groups where the chattel character of women is pronounced, be merely a corollary of the inheritance by the son of his deceased father's proprietary control over the women of the family.

consider in the following lecture. At present we shall consider one of the most persistent expressions of parental ownership, the claim of parents to dispose of offspring in marriage.

Sexual hospitality

Daughters (as well as wives, sisters, etc.) are sometimes given temporarily to guests for sexual intercourse as an act of hospitality. They are sometimes hired out or prostituted. Commonly, however, wherever the idea of parental or kinsfolk ownership more or less prevails, daughters are married off in exchange for another woman, for a wife for the father himself or for his son, or for specified service by the son-in-law, or for a given amount of goods—a bride-price.

Full discussion postponed

We shall consider the meaning and effects in general of marriage by barter, service and purchase when we discuss the subject of marriage. At present we shall note merely the various expressions of and restrictions upon parental power that occur in this connection.

Infant and child-betrothal

Infant- and child-betrothal is a widespread practice. Contracts may be made between parents even before the birth of offspring. Part or all of the bride-price may be paid at betrothal, or there may be merely a making of presents which are quite distinct from the bride-price proper. The engagement may or may not be thought of as binding. Failure to carry it out usually involves the return or forfeiture of gifts or bride-price. In some cases the betrothed child goes to live temporarily or permanently with the family of the future wife or husband. In the latter case the betrothal may be thought of practically as a marriage, there being no additional ceremonial when the betrothed children become marriageable. Betrothal

Bride-price or gifts at betrothal

Betrothal visits or adoption of betrothed by family of future wife or husband

gifts may be even thought of as indemnification to the girl's parents for supporting her until nubility. In general the practice of infant- or child-betrothal indicates that the father or guardian controls the marriage of sons as well as of daughters. A female child is not uncommonly betrothed to an adult male,<sup>1</sup> but even in this case the father or guardian of the future husband, if the latter is youthful, may plan the match. It is interesting to note in this connection however, that in the case of sons this form of parental control is usually thought of from the beginning as a parental obligation to provide a wife for the son. The right of selling a daughter in marriage is also at times accompanied by or substituted for the obligation of providing a husband for her. It may be considered discreditable, for example, to keep a daughter unmarried after she has reached a certain age, or advertisement of the marriageability of a daughter may be incumbent on her parents. The bride-price that has been received for a daughter may even be used to pay for a son's wife.

Control of marriage of sons

A parental obligation

In spite of established custom or law, elopements occur in almost all societies. The treatment accorded the eloping couple if caught, or when voluntarily returning home, and the position given to their offspring, indicate the strength of the customary parental right of disposal in marriage. As we shall see later,<sup>2</sup> customary elopement or marriage by capture may combine with marriage by purchase, the

Elopement

<sup>1</sup> The case of the nominal marriage of an adult female to a male child, the boy's father being the real husband, is merely one of the vagaries of marriage in its legal sense. See p. 139.

<sup>2</sup> Lecture IX.

guardian being regularly compensated after the abduction.

Restrictions upon  
choice of husband  
by parents

Besides the individualistic protests of an elopement, there are various socially recognised restrictions upon the parents' exclusive right of choosing mates for sons and daughters. Here we shall only consider the extent of the girl's say in the matter. Similar but greater privileges exist in the case of sons. Moreover, in a great many cases where daughters have little or no sexual choice, sons are left unhampered. (Ethnographers are apt to be very remiss in failing to state these distinctions according to sex in their accounts of restrictions upon sexual choice.) (1) While a girl may not be allowed to choose her husband, she may not be compelled to marry against her will. If betrothed during childhood, for example, she may, when marriageable, refuse to carry out the contract. (2) It may be customary for her parents to consult her in regard to their choice of a husband. (3) She may choose her husband herself, but parental consent is necessary to the validity of the marriage. (4) Parental consent is necessary only when she is under a certain age.

Free choice by  
widows and  
divorced women

Widows or divorced women are frequently dependent upon parents, yet they have, as a rule, more choice in their second than in their first marriage. The many restrictions of another character upon the remarriage of widows and divorced women we shall consider later.<sup>1</sup>

The history of the bride-price and of its passing into forms of dower or dowry has important bearings upon conjugal as well as upon filial relations.

<sup>1</sup> See pp. 140-1, 143.



Let us confine ourselves at present, however, to the latter facts.

In marriage by purchase the character of the bride-price varies from all degrees of indefiniteness as voluntary and casual gifts which often can not properly be considered as a bride-price to fully prescribed amounts of property. An excess of a customary amount may even be punished by fine. It may vary according to the rank of the groom or of the bride's father or of both. Under circumstances of consanguineous marriage or of marriage with relatives by affinity, the bride-price may be lessened or wholly dispensed with.<sup>1</sup> The bride-price may be paid as a whole or in instalments. Frequently part of it, as we have seen, is paid at betrothal, whether of infants or of adults, thereby making the betrothal binding. The groom may sometimes have intercourse or live with the bride in her father's home, or he may take her to his home before the bride-price is paid in full. In either case it may be customary for the first child or first daughter or for all children born before the debt is paid to belong to the wife's family. Marriage by service frequently occurs in substitution, in whole or in part, for the bride-price. Service is also found where there is no other kind of compensation for the bride, the groom living with and serving his wife's family for a set period, or living independently with his wife but contributing a portion of his products to her family. The service of a son-in-law may continue more or less informally after his wife is paid up for, and special obligations of support or protection or respect may fall upon him.

Nature of  
bride-price

How paid

Combined forms  
of barter and  
service

Of service  
and purchase

Forms of  
service

<sup>1</sup> See pp. 93-4, 164, also pp. 161-2, for traits in bride affecting price.



## Return-gifts

## Dower

## Dowery

Claim on dowery  
by bride's familySignificance of  
dower and doweryThe bride-price  
honourable to the  
bride

A return-gift may be made to the groom, or the groom's father, or relatives, by the bride, or the bride's father, or relatives. Sometimes, in this case, the exact equivalent of the bride-price is customary, or the bride-price itself may be actually returned. The groom, his father, or family may make presents to the bride (dower<sup>1</sup>) before or after marriage (morning-gift). He or they may also make presents as well to her family. The bride's father or family may receive presents and then bestow them or their equivalents upon the bride (dowery), or they may bestow presents upon the bride without having themselves been recipients. Frequently they do not relinquish all claims upon such marriage settlements, reserving the right to reclaim the property at the woman's death or in case of her divorce or widowhood.

The existence of all forms or traces of dower or dowery is of great interest as indicating, if even to a slight extent, modifications in the idea of parental (and marital) ownership. It is significant in this connection that even in communities in the cruder stages of parental (and marital) ownership the giving and receiving of a bride-price is a mark of distinction due to the bride herself. It is a part of the marriage ceremonial necessary for an honourable marriage. Under polygny or concubinage, for example, the bride-price or wedding gift is sometimes paid or made only in the marriage of the superior or head wife. Again, the offspring of a woman for whom no bride-price has been paid may be accounted illegitimate. Of similar interest are the not uncommon social fictions about

<sup>1</sup> In this sense of course much more comprehensive than in its meaning in English law (the right of a widow to share in her deceased husband's real property).

the meaning of the bride-price. It is frequently alleged by a given group that it in no sense represents an act of purchase.

There are rare cases of what may be called, in analogy to the bride-price, a groom-price. It is a compensation, and this is sometimes the explanation of the bride-price also, for depriving the groom's family of his service. Again, where the dowry is on a big scale and where it is practically a settlement for the benefit of the husband, it has been suggested that in this practice we have a form of husband-purchase analogous to wife-purchase.

Groom-price and husband purchase

It should be noted that the right of the father to dispose of offspring in marriage is frequently, as in other matters of guardianship, a fact that we have already referred to, shared or even precluded by other kinsfolk. The mother and her relatives, brothers, father, etc., or the father's own kinsfolk, may hold the guardianship of the child and with the guardianship the right to dispose of him or her in marriage. Sometimes, again, a girl's brother has the right. The duty of providing the marriage gifts or purchase price may also fall upon these relatives.

#### NOTE A.

##### SUBJECTION OF OFFSPRING.

Wilutzky, *Vorgeschichte des Rechts*, Breslau, 1903, ii., 15-21 24-27.

Niebohr, *Slavery as an Industrial System*, The Hague, 1900, pp. 24-29.

##### RIGHTS OF GUARDIANSHIP.

Post, *Grundriss der ethnologischen Jurisprudenz*, Oldenburg and Leipzig, 1894, i., 168-180; *Studium zur Entwicklungsgeschichte des Familienrechts*, Oldenburg and Leipzig, 1889, pp. 157-171.

## AGE OF GIRLS BEGINNING WORK IN CITIES OF THE UNITED STATES.

Wright, *Working Women in Large Cities*, pp. 120-179  
in *Fourth Annual Report of the Commissioner of Labor*,  
Washington, 1889.

## EARNINGS OF CHILDREN IN YORK.

Rowntree, *Poverty, a Study of Town Life*, pp. 59-60.

## EARNINGS OF CHILDREN IN LONDON.

Booth, *Life and Labour*, ix., 421-424, 434-435 ; x, 43.

## MARRIAGE BY PURCHASE, BARTER, AND SERVICE.

Post, *Familienrechts*, pp. 173-201; *Grundriss*, etc., i., 286-305, 317-320.

## CHILD-BETROTHAL.

*Ib.*, i., 320-327; *Familienrechts*, pp. 205-215.

Furnivall, *Child-marriages, Divorces, and Ratifications, etc. in the Diocese of Chester 1561-66*, pp. xv.-xliii., 1-55, in *Publications of Early English Text Society*, London, 1897.

## THE LIBERTY OF SEXUAL CHOICE.

Westermarck, *The History of Human Marriage*, London and New York, 1896, Chap. x.

## TRANSITION OF BRIDE-PRICE INTO DOWER AND DOWERY.

*Ib.*, Chap. xviii.

## NOTE B.

## THE GENESIS OF BETROTHAL.

The means of securing chastity before marriage. Post, *Hausgenossenschaft und Gruppenehen in Ausland*, 1891, p. 845.

A means of securing a son's or daughter's consent to the marriage choice of their parents. Likewise a means of securing a wife in advance for a son in view of a scarcity of women. Steinmetz, *Ethnologische Studien zur ersten Entwicklung der Strafe*, ii., 279, Leiden and Leipzig, 1894.

Child-betrothal: Where there is marriage by barter, a father may not have on hand a marriageable daughter to give in exchange for a wife, *e.g.*, for his son, he therefore promises a younger daughter as soon as she is nubile. Cunow, *Bases économiques du matriarcat in Le Devenir Social*, iv. (1898), 52.

## NOTE C.

Make a comparative study (1) of the dedication of offspring to deity, (2) of parental cannibalism, (3) of restrictions upon

parental power, (4) of distinctions in parental power according to sex of offspring, (5) of parental control of marriage of sons, (6) of the treatment accorded to marriage elopers, indicating when possible when the treatment points to a strengthening or weakening of parental power, (7) of the belief that the bride-price is a sign of respect to the bride herself, (8) of the social fictions about the meaning of the bride-price, showing whether or not they point to a decadence of the custom. Tabulate known and doubtful cases in ethnic organisations where there is a greater mutual responsibility between parents and offspring than between other kindred.

NOTE D.

YAHGAN :

Believe in a sea monster, Lucooma, and children and dogs have been thrown into sea, when boats were endangered, to appease his fury. vii., 181.

A girl is not consulted in regard to choice of husband. Her parents decide. H. & D. vii., 378. Woman is not, as a rule, consulted. Generally bought from her parents. x., 334. Little girls often betrothed to adult men. vii., 171. Sometimes parents agree to unions between little boys and girls. vii., 171. Often a girl has an insurmountable aversion for her husband. Then she is given to man of her choice. vii., 171-172.

CENTRAL AUSTRALIANS :

On rare occasions, at all events amongst Luritcha tribe, children a few years old killed, object of this being to feed a weakly but elder child, who is supposed thereby to gain strength of killed one. p. 52.

The head rings usually made and presented to woman by her son-in-law to whom she has to give her own hair. p. 27, n. 1. A man's waist belt made of human hair, usually provided by his mother-in-law. p. 30. If one of my *Ikuntera* (fathers-in-law) dies, it is my duty to cut my shoulders with a stone knife as a mark of sorrow. If I neglect to do this, then any one of the men who are *Ikuntera* to me has the right to take away my wife and give her to some other man to whom she is *Unawa*. p. 75.

POINT BARROW ESKIMO :

No unusual sight to see a little girl of 10 or 12 carrying a well-grown, heavy child on her back instead of its mother. p. 416.

Older children look after younger. A boy of 6 or 7 will care for one of 2 or 3. p. 417.

Marriages usually arranged by parents, sometimes when principals are mere children. p. 410.

#### BEHRING STRAIT ESKIMO:

From the lower Yukon to the Quskokwin child-betrothals common. Parents of a very small girl, who have no son, may agree with parents of several sons that one of the boys shall live with them and become girl's husband, or a young boy may sometimes choose a family containing a girl, in which he would like to live. He takes with him his clothing and implements, besides a fine suit of clothes for his future bride, goes to people whom he has adopted, and transfers filial duty of every kind to adopted father to exclusion of his own parents. In such cases girl frequently not over 4 or 5. pp. 291-292. Sometimes a couple arrange for a child-betrothal to take effect when first girl is born. p. 292. Among Unalit, when a young man sees a girl he wishes to marry, he tells his parents, and one of them goes to girl's parents to ask their consent. p. 291.

#### CENTRAL ESKIMO:

In rare cases of famine, cannibalism resorted to. Children particularly killed and eaten. p. 574.

Generally children betrothed when very young, but these engagements may be broken off at any time. p. 578. Frequently happens that young man's parents are unwilling to allow him to provide for his parents-in-law, and then he may be rejected at any moment. p. 579. Consent of bride's parents, or, if dead, that of her brother, always necessary. p. 579. Bride must be bought from parents by some present. p. 579. As long as mother-in-law lives with family wives are subordinate to her. p. 579.

#### MELANESIANS:

Ulawa: A chief will buy a girl from her father and keep her to earn money by prostitution for him (the chief) and herself. p. 235.

Florida: Part payment on betrothal of infant. Final payment given to women of bridal party. They lift bride up and carry her on back of one of them out of her father's to her father-



in-law's house. Here she stays 2 or 3 months. Then her parents arrive with gifts, 5 pigs when the bride-price is 50 *rongo* (coils of native money), 10, when it is 100. They say money buys the pigs and not the girl. Santa Cruz: Bride-price and return gifts by bride's relatives. Saa: Early betrothals among inferiors unusual. Northern New Hebrides: Only children of great people betrothed as infants. Banks' Isls. and Lepers' Isl.: A betrothed girl child is often taken to her future home to be brought up there. Lepers' Isl.: When betrothed girl is 10 years old, boy's mother takes her to her own house to teach her household ways. pp. 237-242. A man with a son born to him looks out for the birth of a suitable girl to be his son's wife. p. 237.

Girls never allowed to go out without mother or elder friend. p. 236.

#### EWÉ-SPEAKING PEOPLES:

Terms for father mean, "he who owns," "he who maintains." p. 213. Terms for mother, "she who stays in the house," "she who cooks." p. 215. Young girls dedicated to temple service of the deified king Ajahnto of Porto Novo obliged to remain virgins. About 1880 one put to death for unchastity. pp. 89-90. A father may sell or pawn his children with consent of mother, if she be a free woman. If mother be a slave, she and her offspring are equally the property of her owner, who is free to dispose of her children. Children born to a woman in pawn to a man are pawn to him as well. A free woman can sell or pawn her children without consent of father if he refuse to give her what she requires. If her husband refused to pay a fine for her she might sell or pawn her children to raise the money. In such cases it is not unusual for a mother to sell or pawn children to their father, and men often refuse to assist their wives in such cases, in order that they may thus acquire entire control of their children. p. 221.

Payment of "head-money," in coin or cowries, more commonly in merchandise and rum, to family of girl, her family fixing amount, constitutes marriage. p. 199. A child or even unborn girl may be betrothed and this contract cannot be annulled without man's consent. Presents made by parents of male to those of female child. Marriage arranged without, as a rule, any reference being made to her wishes, though she cannot be forced into a

union absolutely repugnant. pp. 199, 201. Slave-girls given to brides by their families. p. 205.

TSHI-SPEAKING PEOPLES :

In interior as formerly in colony, when a great danger threatens a town, a newly born infant is torn limb from limb as a sacrifice to tutelary deity of place. p. 169. Stated that many Odonko slaves in Ashanti are kept exclusively for bearing children for sacrifice. p. 290. If a mother has been so unfortunate as to have had several of her children die, not uncommon for her to make a vow to devote next-born to service of gods, hoping thereby to preserve its life. p. 120. Father can not sell or pawn a child without consent of both mother and her relations. Father's consent also necessary unless he refuses or is unable to give mother sum she requires. If a woman in pawn bears children, she cannot be redeemed without paying 4½ ackies for each child born, as an equivalent for maintenance. p. 295. After a disastrous war one of the chiefs sold his son for \$9.00 to help defray his share in cost of war. p. 272. In separation, if mother is unable to make restitution of her expenses she may leave children with father in pawn and they are obliged to serve him until the entire sum with 50 per cent. interest is paid. From such causes children often become pawns in their father's house for life, and are inherited as such by his heir. p. 284.

At puberty, usually 11th or 12th year, a girl is taken to the waterside and washed. An offering is made on the banks of the stream to the local gods by her family. Then she is publicly advertised for marriage by being paraded through the streets decked out in ornaments. Soon after a suitor pays "head-money" to her family, also sending them liquors, tobacco, and pipes. The bride is led to his house. pp. 235-237. Betrothals frequently take place before puberty and sometimes even before birth. Children sometimes betrothed to each other by presentation of a few bottles of rum and a piece of cotton cloth to girl's parents. p. 282. No parents can force a daughter to marry. But should she refuse an eligible suitor, she can no longer claim protection and support from them and is ordinarily compelled to quit their household. p. 285. Marriage contracts are made by payment of from 4½ ackies to 2 ounces gold, *i. e.*, from about

85s. to £7 5s. to relations of girl. Among very poor no *head* or *rum* money may be paid or only one or two bottles of rum given the family. In such cases husband generally lives with wife's family, giving them his services. p. 281. A slave-girl is generally given to a bride by her family among wealthy classes. p. 288.

YORUBA-SPEAKING PEOPLES:

A new-born child, not more than 3 or 4 days old, sacrificed by priests 4 times a year to god Olori-merin. Mother's presence necessary. p. 84.

Parents responsible for crimes of children. p. 177. But not for debts. p. 190.

When a man desires to marry a girl, his parents visit her parents with the proposal. If accepted, suitor sends a present of native clothes and kola-nuts. Bride is conducted to bridegroom's house by a procession of women. Bride's parents never attend wedding feast there. pp. 153-154. Girls of better class are almost always betrothed when children, frequently when mere infants, the husband *in futuro* being sometimes an adult, sometimes a boy. p. 183. Parents cannot force a girl to marry, but they can prevent her marrying one whom they disapprove. Should she misbehave with him they can shut her up and chastise her. If she run away with him, they usually take no further trouble. p. 185. Bride-price varies with rank of father and suitor. Regarded as a compensation to parents for loss of daughter's services, not in any sense purchase of a chattel. p. 182.

THOMPSON RIVER INDIANS:

After puberty ceremonial, a girl had to help her mother with cooking, sewing, other household work, root-digging, etc. p. 317. The custom of giving children to friends to bring up formerly prevalent. If a child died, sometimes a friend of the parents who had many children would give them one of his a few years of age, to take the place of dead child, and they were expected to rear it until it reached age of maturity. If a married couple had no children and were thought highly of by the other people, a friend or relative who had many children gave them one of his that they might not be lonely. Many of these children, when grown up, preferred to live with foster-parents rather than with real parents. p. 308.

Girls often betrothed while mere infants to men sometimes

20 years older. p. 321. Parents who refused all offers of marriage to their daughter and who watched her too closely to let any of her suitors get a chance to "touch" her, sometimes had mortification of finding that girl had eloped; even if she were brought back by father, he could only deliver her up to the young man, as custom declared them already married. If a man took a girl away by force it was different; but this very seldom happened, and even elopements rare. Young women hindered by their relatives from marrying man they desired, or made to marry some one they did not like have been known to commit suicide. pp. 324-325.

One of the modes of marriage considered most honourable was that called "to place down"; the young man sent a relative or some other person with presents to girl's parents. He placed gifts before them. A meeting of girl's nearest kin then called. If all agreed in thinking young man suitable, girl was asked if she liked him. If she assented, which she generally did, not caring to go against wishes of her relatives, messenger informed and suitor invited to house of girl's parents. p. 322. Again, at a public gathering young man, or, if bashful, some man appointed by his parents, proclaimed before all the people that the suitor made an offer of marriage to a certain girl and that these were the presents, at the same time throwing them down, or, if a horse, leading it out. If offer refused, presents returned; if accepted, retained. Nominally given to parents of girl, they were never retained or used by them, but divided among girl's blood relatives. p. 322.

#### KABYLES:

He who strikes his father fined one real. Aït Ousammer, etc. Same penalty on complaint of parents to village council. iii., 379. Aït Fraouçen. He who strikes his father or mother or is disrespectful towards them fined 10 *douros*. iii., 391. Cheurfa, etc. He who speaks improperly to his father fined  $\frac{1}{4}$  of a real. A rebellious child who threatens to assault his father or mother fined 10 oxen if with a gun, 4, if with a sword or axe. iii., 332. If a rebellious son who has left his father's house steals and is fined, his father will pay fine. But if son has separated his interests from those of his father, he will pay it himself. iii., 335.

A minor son may not marry without his father's consent or in case of his death without consent of father's representatives.



The mother has no authority in the matter unless there is no male relative on the paternal side. Considered a duty for the man who is of age to consult his relatives about his marriage. A girl is hardly ever consulted. Widow and divorced wife never dispose of themselves, but in most tribes may twice reject suitors. The third time they must submit to will of those who have right to marry them off. This right ceases as soon as a woman reaches an age when marriage would be sterile. A widow is disposed of either by her relatives or the heirs of her husband. ii., 149-151. Ibethran. The first time a woman marries she is sold by her relatives; the second time, she may dispose of herself. iii., 434. In general the *thāmamth* is not regulated in amount by law. ii., 153. Cheurfa etc. He who gives his daughter, sister, or any other woman at his disposal in marriage may not receive more than 30 reals for *thāmamth*, more than 4 *sāa* of cheese, 4 measures of oil and 5 reals, on the day when the *fathā* is tied. If he receive more, he as well as the bridegroom will be fined 100 reals, and latter will die without male children. He who marries a woman, who has reached age when she should be consulted, without consulting her, is fined 5 reals. iii., 328. Ait Iraten. In 1785 an action was brought by a man against his wife who was represented by her brother about ownership of a cow. After consummation of marriage wife had gone according to custom to visit her father. Upon leaving him, he, also according to custom, had given her a cow. This animal was claimed by her husband on ground that it had been sent him in exchange for the presents which, according to custom, the wife had taken to her father on aforesaid visit. Wife's brother alleged that husband had received other presents in exchange and that the cow was meant for wife. Latter won the suit. iii., 450-451. Ibethran. If a father or brother neglect a daughter or sister after her marriage, if he fail to visit her on feast days or when she is confined, if he fail to fulfil, in a word, the duties of a good relative, she may demand her *thāmamth* from him. iii., 434.

#### ANCIENT ARABS :

And . . . to your parents show kindness, . . . iv., 40.

And give women their dowries freely; and if they are good enough to remit any of it themselves, then devour it with good digestion and appetite. iv., 3; also xxxiii., 49.



## ANCIENT HEBREWS :

Honour thy father and thy mother that thy days may be long upon the land which the Lord thy God giveth thee. *Ex. xx., 12.* And he that smiteth his father, or his mother shall surely be put to death. *Ib. xxi., 15.* And he that curseth his father, or his mother, shall surely be put to death. *Ib. xxi., 17.* Ye shall fear every man his mother and his father. *Lev. xix., 3.* The first-born of thy sons shalt thou give unto me. *Ex. xxii., 29.* All the first-born of thy sons thou shalt redeem. *Ib. xxxiv., 20.* In the famine of the siege that is predicted as a consequence of disobedience to God, it is predicted that parents will devour their children. *Deut. xxviii., 53-57.* Samaria was besieged and there was a great famine. A certain woman complained unto the king : This woman said unto me, Give thy son that we may eat him to-day, and we will eat my son to-morrow. So we boiled my son, and did eat him : and I said unto her on the next day, Give thy son, that we may eat him : and she hath hid her son. *2 Kings vi., 28-29.* If a woman also vow a vow unto the Lord, and bind herself by a bond, being in her father's house in her youth; and her father hear her vow, and her bond wherewith she hath bound her soul, and her father shall hold his peace at her: then all her vows shall stand and every bond wherewith she hath bound her soul shall stand. But if her father disallow her in the day that he heareth; not any of her vows, or of her bonds wherewith she hath bound her soul, shall stand: and the Lord shall forgive her, because her father disallowed her. *Numb. xxx., 3-5.* A creditor came to take the two sons of one of the deceased sons of the prophets to be bondmen. *2 Kings vi., 1.* If a man have a stubborn and rebellious son, which will not obey the voice of his father, or the voice of his mother, and that, when they have chastened him, will not hearken unto them, then shall his father and his mother lay hold on him, and bring him out unto the elders of his city, and unto the gate of his place; and they shall say unto the elders of his city : This our son is stubborn and rebellious, he will not obey our voice; he is a glutton and a drunkard. And all the men of his city shall stone him with stones, that he die: so shalt thou put evil away from among you; and all Israel shall hear, and fear. *Deut. xxi., 18-21.* Cursed be he that setteth light by his father or his mother. *Ib. xxvii., 16.*

A man of Gibeah offered his daughter to some revellers to abuse if they would spare his guest. Judges xix., 24. Do not prostitute thy daughter. Lev. xix., 29.

After Samson's marriage, his anger was kindled because of his wife's deceit, and he went up to his father's house. But Samson's wife was given to his companion, whom he had used as his friend. A while after Samson visited his wife with a kid. But her father would not suffer him to go in. And her father said, I verily thought that thou hadst utterly hated her; therefore I gave her to thy companion: is not her younger sister fairer than she? take her, I pray thee, instead of her. Judges xiv., 19, 20; xv., 1-2. Ibzan, a judge of Israel, had 30 sons and 30 daughters, whom he sent abroad, and took in 30 daughters from abroad for his sons. Judges xii., 9. Samson told his father and his mother, . . . I have seen a woman in Timnath of the daughters of the Philistines: now therefore get her for me to wife. They went down to see her. *Ib.* xiv., 2, 5. Jacob said: I will serve thee [his uncle Laban] 7 years for Rachel thy younger daughter. Jacob served 7 year and by the deceit of Laban was given Leah the elder daughter. For Laban said: It must not be done so in our country, to give the younger before the first-born. Jacob then served another 7 years for Rachel. Laban gave each of his daughters a handmaid at their marriage. Gen. xxix., 20, 24, 26, 27, 29. Rachel and Leah said: Is there any portion or inheritance for us in our father's house? Are we not counted of him strangers? for he has sold us. *Ib.* xxxi., 14-16. And Caleb said, He that smiteth Kirjath-sepher, and taketh it to him will I give Achsah my daughter to wife. And Othniel the son of Kenaz, Caleb's younger brother, took it, and he gave him Achsah his daughter to wife. And it came to pass, when she came to him, that she moved him to ask of her father a field: and she lighted from off her ass; and Caleb said unto her, What wilt thou? and she said unto him, Give me a blessing; for thou hast given me a south land; give me also springs of water. And Caleb gave her the upper springs and the nether springs. Joshua xv., 16-19.

#### BABYLONIANS:

If a man be in debt and sell his wife, son, or daughter, or bind them over to service, for 3 years they shall work in the house of their purchaser or master; in the fourth year they shall be given

their freedom. § 117. If a father devote a votary or NU PAR to a god and do not give her a dowry, after her father dies she shall receive as her share in the goods of her father's house one third of the portion of a son and she shall enjoy it as long as she lives. After her (death), it belongs to her brothers. § 181. If the son of a NER. SE. GA, or the son of a devotee, say to his father who has reared him, or his mother who has reared him: "My father thou art not," "My mother thou art not," they shall cut out his tongue. § 192. If the son of a NER. SE. GA, or the son of a devotee, identify his own father's house and hate the father who has reared him and the mother who has reared him and go back to his father's house, they shall pluck out his eye. § 193. If a son strike a father, they shall cut off his fingers. § 195. If a man take a young child as a son and, when he takes him, he is rebellious toward his father and mother (who have adopted him), that adopted son shall return to the house of his father. § 186. If the one seized die of abuse or neglect in the house of him who seized him, the owner of the one seized shall call the merchant to account; and if it be a man's son (that he seized) they shall put his son to death. § 116. If a man strike a man's daughter and bring about a miscarriage, he shall pay 10 shekels of silver for her miscarriage. § 209. If that woman die they shall put his daughter to death. § 210.

If a man take wives for his sons and do not take a wife for his youngest son, after the father dies, when the brothers divide, they shall give from the goods of the father's house to their youngest brother, who has not taken a wife, money for a marriage settlement in addition to his portion and they shall enable him to take a wife. § 166. If a man take a wife and she do not present him with children and that woman die; if his father-in-law return to him the marriage settlement which that man brought to the house of his father-in-law, her husband may not lay claim to the dowry of that woman. Her dowry belongs to the house of her father. § 163. If a father do not give a dowry to his daughter, a bride or devotee, after her father dies she shall receive as her share in the goods of her father's house the portion of a son, and she shall enjoy it as long as she lives. After her (death) it belongs to her brothers. § 180.

If a man do not present a dowry to his daughter, who is a con-

cubine, and do not give her to a husband ; after her father dies her brothers shall present her a dowry proportionate to the fortune of her father's house and they shall give her to a husband. § 184. If a father present a dowry to his daughter, who is a concubine, and give her a husband and write a deed of gift ; after the father dies she shall not share in the goods of her father's house. § 183. If a man take a wife and do not arrange with her the (proper) contracts, that woman is not a (legal) wife. § 128.

ANCIENT HINDUS.

Selling one's child a minor offence causing loss of caste. xi., 62, 67. A father may beat a son who has committed a fault with a rope or split bamboo, but on the back part of the body only, *in order to correct him*. iv., 164 ; viii., 299-300. "That trouble and pain which the parents undergo on the birth of their children can not be compensated even in a hundred years." The son is always to do what is agreeable to his parents. Obedience to them is the best form of austerity. He must not even do meritorious acts without their permission. He shall always serve them. To honour them is the highest duty. ii., 225-237. A son who goes to law with his father or who quarrels with his father or mother or who forsakes them *without a sufficient reason* must be avoided. iii., 157, 159, 161 ; iv., 180, 181. Casting off one's father or mother, a minor offence causing loss of caste, likewise to be fined by the king 600 panas unless they are guilty of a crime causing loss of caste. xi., 60, 67 ; viii., 389. Reprehensible is the son who does not protect his mother after her husband has died. ix., 3, 4. He who neglects not his father, mother, and *guru*, even after he has become a householder, will conquer the 3 worlds and, radiant in body like a god, he will enjoy bliss in heaven. ii., 232-237. For defaming mother or father a fine of 200 panas. viii., 275.

No father who knows the law must take even the smallest gratuity for his daughter : for he is then a seller of his offspring. When the relatives do not appropriate for their use the gratuity given, it is not a sale ; in that case the gift is only a token of respect and kindness towards the maiden. iii., 51, 54. Even a Sudra ought not to take a nuptial fee, when he gives away his



daughter : for he who takes a fee sells his daughter, *covering* the transaction by another name. ix., 98.

Reprehensible is the father who gives not his daughter in marriage at the proper time. ix., 4. Three years let a damsel wait though she be marriageable ; but after that time let her choose for herself a bridegroom of equal caste and rank. If, being not given in marriage, she herself seeks a husband, she incurs no guilt, nor does he whom she weds. But she shall not take with her any ornaments given by her father, mother, or brothers ; if she carries them away, it will be theft. Her husband need not pay any nuptial fee to her father ; for the latter will lose his dominion over her in consequence of not giving her in marriage. ix., 90-93. To maiden sisters, brothers who have inherited parental estate shall give each one-fourth of his portion. A brother refusing to do this will become an outcast. ix., 118.

#### ANCIENT CHINESE:

In the time of duke Ting of K'ü-lü, there occurred the case of a man killing his father. The duke said: When a son kills his father, all who are in the house with him should kill him without mercy. . . . his house should be destroyed, the whole place should be laid under water and reduced to a swamp. xxvii., 195. When sons and their wives have not been filial and reverential, the parents should not be angry and resentful with them, but endeavour to instruct them. If they will not receive instruction, they should then be angry with them. If that anger do no good, they can then drive out the son and send the wife away. xxvii., 456. After the proper dressing at cock-crow sons and daughters-in-law should go to their parents and parents-in-law. On getting to where they are, with bated breath and gentle voice, they should ask if their clothes are too warm or too cold, whether they are ill or pained, or uncomfortable in any part; and if they be so, they should proceed reverentially to stroke and scratch the place. . . . In bringing in the basin for them to wash, the younger will carry the stand and the elder the water; they will beg to be allowed to pour out the water, and when the washing is concluded they will hand the towel. They will ask whether they want anything, and then respectfully bring it. All this they will do with an appearance of pleasure to make their



parents feel at ease. They should bring food to them. . . . From the time that sons receive an official appointment, they and their father occupy different parts of their residence. But at the dawn the son will pay his respects, and express his affection by the offer of pleasant delicacies. . . . At sundown the son will pay his evening visit in the same way. When the parents wish to sit anywhere, the sons and their wives should carry their mats and ask in what direction they shall lay them. . . . What is left by their parents, they will themselves eat. When the father is dead, and the mother still alive, the eldest son should wait upon her at her meals; and the wives of the other sons will do with what is left as in the former case. . . . When with their parents, sons and their wives, when ordered to do anything, should immediately respond and reverently proceed to do it. In going forwards and backwards, or turning around, they should be careful and grave; . . . they should not presume to eructate, sneeze, or cough, to yawn or stretch themselves, to stand on one foot, or to lean against anything, or to look askance. . . . They should wash and mend their parents' clothes. . . . Every five days they should prepare tepid water, and ask them to take a bath, and every three days prepare water for them to wash their heads. If in the meantime their faces appear dirty, they should heat the water in which the rice has been cleaned, and ask them to wash with it; if their feet be dirty, they should prepare hot water, and ask them to wash them with it. . . . When their parents give them anything to eat or drink, which they do not like, they will notwithstanding taste it and wait for their further orders; when they give them clothes, which are not to their mind, they will put them on, and wait in the same way. If their parents give them anything to do, and then employ another to take their place, although they do not like the arrangement, they will in the meantime give it into his hands and let him do it, doing it again, if it be not done well. . . . After a son has admonished his parent, in case he have a fault, if the parent be angry, and beat him till the blood flows, he should not presume to be angry and resentful but be still more reverential and more filial. xxvii., 450-457. In serving his father a son should conceal his faults, and not openly or strongly remonstrate with him about them, should

in every possible way wait on and nourish him, without being tied to definite rules; should serve him laboriously until his death, and then complete the mourning for him for three years. xxvii., 121. When a father's summons came to him, a son reverently obeyed it without any delay. Whatever work he had in hand, he laid aside. He ejected the meat that was in his mouth, and ran, not contenting himself with a measured, though rapid, pace. xxviii., 24. When his father or mother is ill, a young man who has been capped should not use his comb, nor walk with his elbows stuck out, nor speak on idle topics, nor take his lute or cithern in hand. . . . He should not laugh so as to show his teeth. xxvii., 83. In the service of his parents by a son, if he have thrice remonstrated and is still not listened to, he should follow his remonstrance with loud crying and tears. xxvii., 114. There are three degrees of filial piety. The highest is the honouring of our parents; the second is not disgracing them; and the lowest is the being able to support them. The body is that which has been transmitted to us by our parents; dare any one allow himself to be irreverent in the employment of their legacy? If a man in his own house and privacy be not grave, he is not filial; if in serving his ruler he be not loyal, he is not filial; if in discharging the duties of office he be not reverent, he is not filial; if with friends he be not sincere, he is not filial; if on the field of battle he be not brave, he is not filial. If he fail in these five things, the evil of the disgrace will reach his parents;—dare he but reverently attend to them? The fundamental lesson for all is filial piety. The practice of it is seen in the support of parents. One may be able to support them; the difficulty is in doing so with the proper reverence. One may attain to that reverence; the difficulty is to do so without self-constraint. That freedom from constraint may be realised; the difficulty is to maintain it to the end. When his parents are dead, and the son carefully watches over his actions so that a bad name, involving his parents, shall not be handed down, he may be said to be able to maintain his piety to the end. True love is the love of this; true propriety is the doing of this; true righteousness is the rightness of this; true sincerity is being sincere in this; true strength is being strong in this. Joy springs from conformity to this; punishments spring from the violation

of this. . . . Set up filial piety, and it will fill the space from earth to heaven; spread it out, and it will extend over all the ground to the four seas; hand it down to future ages, and from morning to evening it will be observed; push it on to the eastern sea, the western sea, the southern sea, and the northern sea, and it will be everywhere the law for men, and their obedience to it will be uniform. . . . A man's parents give birth to his person all complete, and to return it to them all complete may be called filial duty. When no member has been mutilated and no disgrace done to any part of the person, it may be called complete; and hence a superior man does not dare to take the slightest step in forgetfulness of his filial duty. . . . A son should not forget his parents in a single lifting up of his feet, and therefore he will walk in the highway and not take a bypath, he will use a boat and not attempt to wade through a stream;—not daring, with the body left him by his parents, to go in the way of peril. He should not forget his parents in the utterance of a single word, and therefore an evil word will not issue from his mouth. Not to disgrace his person and not to cause shame to his parents may be called filial duty. xxviii., 226-229. A son of all-comprehensive virtue serves his parents as he serves Heaven, and serves Heaven as he serves his parents. xxviii., 269. While his parents are alive, a son will not have wealth that he calls his own. xxvii., 69. A son and his wife should have no private goods, nor animals, nor vessels. They should not presume to borrow from, or give anything to, another person. If any one give the wife an article of food or dress, a piece of cloth or silk, a handkerchief for her girdle, an iris or orchid, she should receive and offer it to her parents-in-law. If they accept it, she will be glad as if she were receiving it afresh. If they return it to her, she should decline it, and if they do not allow her to do so, she will take it as though it were a second gift, and lay it by to wait until they may want it. If she want to give it to some of her cousins, she must ask leave to do so, and that being granted, she will give it. xxvii., 458. Son's wives should serve their parents-in-law as they would their own. xxviii., 341. When her father-in-law is dead, her mother-in-law takes the place of the old lady, but the wife of the eldest son, on all occasions of sacrificing and receiving guests, must ask her directions in everything, while the other sons' wives

must ask directions from her. When her parents-in-law employ the eldest son's wife, she should not be dilatory, unfriendly, or impolite to the wives of his brothers for their not helping her. When the parents-in-law employ any of them, they should not presume to consider themselves on an equality with the other; walking side by side with her, or giving their orders in the same way, or sitting in the same position as she. xxvii., 457-458. No daughter-in-law, without being told to go to her own apartment, should venture to withdraw from that of her parents-in-law. Whatever she is about to do, she should ask leave from them. xxvii., 458.

If there were betrothal rights, a woman became a wife; and if she went without these, a concubine. xxvii., 479.

#### ANCIENT ROMANS :

The ascendant has the same rights in respect of the property of the manumitted son or daughter, grandson or granddaughter, as the patron has over the property of his freedman. *J. i., xii., 6.* Absolute power of the father over his legitimate children throughout their life, *jus vitæ necis* (involving the right of imprisoning, flogging, chaining, selling, or killing them, however exalted their position may be). If a father sells his son three times, the son shall be free from the power of the father. Table IV. Our children begotten in lawful marriage are in our power. *G. l., 55 ; J. i., ix.* So, also, is the son born to your son and to his wife, . . . and your great-grandson and great-granddaughter and other descendants are equally in your power. But a child born of your daughter is not in your power, but in the power of his father. *J. i., ix.* All children who are in the power of their ascendant may be sold by the very same formal process by which slaves are sold. These formal sales are usually only gone through by ascendants and fictitious purchasers when they desire to release the persons so sold from their power . . . It is necessary that he who receives by way of formal transfer should take hold of the thing itself which is given him in this solemn mode, and hence, also, it is called "mancipatio," because the thing is taken by the hand *G. i., 117, 118a, 121 ; J. i., xi.* The father sells his son to some person who releases him from power by the process of fictitious vindication, by which means



the son falls again into the power of his father, who sells his son again either to the same person or to others, but usually to the same person, and this person again releases the son from power by the process of fictitious vindication, and then when the son is again brought into the power of the father, the latter sells him a third time, either to the same person or to another, but usually to the same person, and by this last sale the son ceases to be in the power of the father, although he is not yet released from power, but is in the condition of a person in a state of bondage. *G. i.*, 132. Emancipation also took place by imperial rescript. We, in our forethought, have reformed this matter by a constitution, so that the old fictitious process being done away with, ascendants go at once before the competent judges and magistrates, and free from their power their sons and daughters. *J. i.*, *xiii.*, 6. If the emancipated person be under the age of puberty, the ascendant, as the result of the emancipation, acquires the tutorship. *Id.* Adoption also takes place through a formal sale. *G. i.*, 134 and *J. i.*, *xii.*, 8. Children, actual or adopted, have scarcely any means of compelling an ascendant to release them from his power. *J. i.*, *xiii.*, 10. It is not lawful to offer any indignity to those whom we have in our bondage, otherwise we are liable to an action for outrage—indeed, men are not kept long in this state, but, for form's sake, are usually so only for a moment, unless they have been formally surrendered by their ascendant on account of damage caused by them. *G. i.*, 141. The wrongful acts of sons in power or of slaves, as, for example, if they are guilty of theft, or commit an outrage, give rise to noxal actions, in which it is lawful for the father or master either to pay the estimated damages or to abandon him by way of reparation, for it was unjust that their wrongful acts should involve their ascendants or masters in greater loss than the value of their persons. *G.*, *iv.*, 75. (The parallel passage in Justinian refers *only* to slaves.) Formerly, whatever our emancipated children of both sexes acquired, excepting, of course, property gained in war, was acquired for the benefit of their parents. So that that which an ascendant had acquired through one child he could give, or sell, or apply in any way he pleased for the benefit of another child, or a stranger. As this appeared very harsh to us we have relieved the children and yet reserved for the ascendants



their due. All which comes through the property of the father shall, according to the old rule, be acquired entirely for the ascendant's benefit ( for what objection can be made to that which comes from the father returning to him?). But whatever the son in power acquires in any other way, of this the father shall have the use and enjoyment, but the son shall retain the ownership. Formerly at emancipation a father retained one-third of the property. Now the father retains the usufruct of one-half. *J. ii., ix., 1-2.* A son, though he become a soldier, a senator, or a consul, still remains in the power of his father, for neither military service nor consular dignity can free the son from power. But, by our constitution, the supreme dignity of the patriciate frees the son from the power of his father immediately the imperial patent is conferred, for who could endure that any father should be able by emancipation to release his son from the thralldom of his power, and yet the Imperial Majesty should not be able to withdraw from the power of another one selected to rank as a father. *J. i., xii., 4.*

The consent of an ascendant in whose power a male or a female is, is necessary to marriage. *J. i., x.*

#### FRENCH:

371. A child of all ages owes honour and respect to his father and mother. 372. He remains under their authority until his majority or his emancipation. 373. The father alone exercises this authority during the marriage. 374. A child cannot leave his father's house without latter's consent, unless it be to enlist voluntarily after he has reached the full age of 18. 375. A father, who, for very serious reasons, is displeased with conduct of a child, shall have the following means to correct him. 376. If child has not yet commenced his sixteenth year, father can have him incarcerated during a period not exceeding one month: for that purpose the Presiding Justice of the Tribunal of the District must at his request issue an order of arrest. 377. From beginning of child's sixteenth year, until his majority or emancipation, father can only ask that he be incarcerated for 6 months at the utmost: He shall apply to the Presiding Justice of said Tribunal, who, after having conferred with the King's Attorney (Republic's Attorney), shall issue an order of arrest or refuse it,

and may in former case reduce time of incarceration asked for by father. 378. Father shall only be bound to sign an undertaking to pay all expenses and to furnish proper support. 379. Father is always at liberty to reduce time of incarceration ordered or applied for by him. If after his liberation, child again falls back into bad habits, the incarceration can be ordered again. . . . 381. A mother who survives, and has not remarried, can only have a child incarcerated with the assistance of the two nearest paternal relatives. 382. When the child has personal property, or a trade, his incarceration can only take place upon an application in the manner provided for by article 377, even if the child is less than sixteen years of age. A child who is incarcerated can address a brief to Attorney-General of Royal Court (Court of Appeals). Latter shall make inquiries through King's Attorney (Republic's Attorney) of the Tribunal of First Instance, and shall make his report to the Presiding Justice of the Royal Court (Court of Appeals), who, after giving notice to the father and having gathered full information, can cancel or amend the order made by the Presiding Justice of the Tribunal of First Instance. 205. (Amended by Law of 9th of March, 1891.) Children owe support to their father and mother and other ascendants who are in want.

146. There is no marriage when there is no consent. 148. A son who has not reached full age of 25, and a daughter the full age of 21, cannot contract marriage without consent of father and mother : in case of disagreement the consent of the father is sufficient. 151. After aforesaid age children shall be bound to ask, by a respectful and formal summons, for advice of father and mother, or of grandfathers and grandmothers if father and mother are dead, or if it is impossible for them to express their wish. 152. From 21 to 25 in case of daughters, the respectful summons shall be renewed twice more from month to month ; and one month after third summons the celebration of the marriage can take place. 153. After 30, if there is no consent, the marriage can take place one month after one respectful summons. 156, 157. Civil officers not complying with these rules are subject to a fine and to imprisonment for not less than 6 months where parties are under 21 and 25 and for not less than one month where no summons has been issued. 204. A child has no claim against

his father and mother for his establishment by marriage or otherwise. 1440. Every person who gives a dowry is obliged to guarantee it, and the interest runs from day of marriage, even if time is allowed for payment, unless there is some stipulation to the contrary.

#### PEOPLE OF UNITED STATES:

Father has paramount right of custody. May be forfeited by misconduct. Primary object of custody is to secure welfare of child and not special parental claims. § 248. State may assume care and custody of neglected children. § 256. Cruel and merciless punishment is an indictable offence, but the law reluctantly interferes except in cases of permanent injury or malicious infliction. § 244, N. 3. Father entitled to child's labour and services until latter's majority or marriage providing he supports child; but father not obliged to claim his child's earnings for benefit of his own creditors where he has not objected to child contracting on his own account; payment to child and not to the parent is a sufficient discharge. §§ 252, 252a. In common law a mother has no right to services and earnings of a minor child; but there is a tendency to grant her rights in these respects especially if she be a widow and have borne burden of child's support. § 254. The courts are reluctant to grant compensation for services of adult offspring living at home unless an explicit agreement has been made. § 269. In case of injury to a child a parent may usually claim indemnity for loss of his services, not merely during that part of his minority when he is capable of rendering service. § 258. A parent may maintain an action for the seduction of his daughter on same principle. And here it is not necessary for daughter to be under age providing a relationship of servant and master exists between her and her father. Evidence of service may be very slight, making tea, milking cows, etc. Tendency in some States to enable a woman to sue directly for her own seduction and consequent injury. §§ 261, 261a. Father is not liable for acts of child committed without his knowledge, consent, participation, or sanction, and not in the course of his employment of child. § 263. Marriage of minors without consent of parent or guardian forbidden, but such marriage remains valid. In some States this consent is a

prerequisite to granting the marriage license. § 30. A parent cannot sue for enticing his child into a marriage against parental consent. § 260.

## LECTURE V

### HOME EDUCATION AND STAGES OF PARENTHOOD

Three stages of  
parenthood

THERE are at least three broad stages in the relationship between parents and offspring which should be noted as a basis for classification of facts of home education. The economic and cultural stages in general to which these types of parenthood more or less correspond we shall consider more fully later.

First stage

In the first stage, lactation is more or less prolonged, and childhood and youth are comparatively short. Parents have more or less absolute power over offspring, but this lasts only during the period of natural dependence. Sympathetic relations of more or less mutual affection and help may be maintained, however, after filial dependence ceases.<sup>1</sup> Here parental mastery must be distinguished from parental ownership, for the idea of property in general is but little undeveloped. There is little if any capital either in human beings or in other forms. This stage is characterised both by parental affection and indulgence and by parental indifference and neglect. In either case the child is subject to abuse from outbursts of parental temper; but there is no attempt to discipline him for his own sake. He learns the arts of subsistence through imitation.

Characterised by  
affection and indul-  
gence or indiffer-  
ence and neglect

No discipline

<sup>1</sup> Moreover in most ethnic groups the elder men and women, but particularly the men, are much respected and this group attitude towards old age probably affects filial relations. An apparent exception is the practice of putting old parents to death, but this is often thought to be for their good.



Let us note at this point, parenthetically, the important part played by imitation throughout home education. Imitation both unconscious and conscious is *par excellence* the educational method of the family. It is plain that a considerable part of the adaptation of living beings to their environment, *i.e., of beings that are born plastic*, is passed on from generation to generation through imitation. Were this not so, much if not all of the road traversed by one generation would have to be retravelled by the next generation from the very beginning and without *short-cuts*.<sup>1</sup> Consequently there would be little chance for the novel adaptation, the propitious individual variation, that constitutes progress. So important is the family task of adapting the individual to his environment *through imitation* that it seems as if in undeveloped types of family the advantages of plasticity at birth and prolonged infancy cannot be fully availed of. It is notoriously in the family that individual initiative or invention is discouraged. It is only the most advanced type of family that educates the child in such a way that the necessary adaptation of the individual to his environment is secured, while, at the same time, the capacity for individual variation is fostered and the advantage of the prolongation of infancy fully realised.<sup>2</sup> Although imitation training in family association is woven into the pettiest details of daily life, practically all habits of thought or conduct being matter of imitation, this training is for the

Economic training  
through imitation

Rôle of imitation in  
home education

Its relation to  
individual variation

Advantages of  
plasticity at birth  
not fully realised  
Initiative discour-  
aged in undeveloped  
family types

Attitude towards  
individual variation  
in higher types of  
family

Unconscious and  
conscious imitation

<sup>1</sup> If, according to the theory of recapitulation, the child passes through the experience of the human race, as well as through that of animal ancestors, he is greatly aided, in the latter part of his course, by his faculty for imitation.

<sup>2</sup> *Cp.* p. 46 for primitive man's impatience of physical variation.

Imitation conscious  
in economic  
training

Hereditary  
occupations

As forms of inher-  
ited property

Second stage

Children valuable  
chattels

Discipline from an  
utilitarian stand-  
point

Training for the  
sake of the group

Filial subordination  
at times during life-  
time of parent

After the death of  
parents

most part unconscious on the part of both parents and offspring. Imitation may, of course, become conscious along all lines of activity; but it is in the teaching and training of household or field or forest arts or crafts that it is most apt to be deliberate or systematic. Here child-labour is child-training. Hereditary occupations are often, where the division of labour in general has arisen, the outcome of this familial economic training. The son is apprenticed to his father and from him learns the special craft of which he is master. Let us note, incidentally, that this craft may be of a secret or monopolistic character and that it is then inherited as a form of private property.

To return to our classification. In the second stage of relationship between parent and child, immaturity is prolonged with the need of adaptation to a more complex environment. Economic ideas are more or less well developed. Offspring are forms of capital. Child-labour is valuable and marriage by purchase prevails. Child-discipline is well developed. It may even begin in infancy in attempts to harden the infant and to regulate his habits. Discipline exists primarily, however, to make the child useful to his parents. Filial obedience and service are also recognised, however, to a certain extent, as social virtues necessary to the cohesion of the group. It may therefore be expected of parents to give this training to their children for the sake of the group. Filial subordination may last throughout the life-time of the parent, particularly, when the latter is the head of the kinsfolk group. It frequently lasts even after the death of parents; for in this stage ancestor-worship

is as a rule well developed.<sup>1</sup> As we shall see later, the married daughter is usually, in thoroughgoing marriage by purchase, cut off from her own family. Under these circumstances she becomes as a rule subservient to her husband's parents, instead of her own.

Subservience to  
parents-in-law

The third stage is distinguished from the others by the fact that here, for the first time, the child is educated and provided for *primarily for his own sake*. This is an extremely significant fact in the history of the family and of civilisation. For the first time, progressive individual variations may be—even here they are not always—fully encouraged. In this stage, the period of immaturity is long, but at its close offspring become *customarily*, as in the first stage, completely independent of parents.

Third stage

Education primarily  
for sake of child

The principle of equality of inheritance by offspring is or tends to be established in the third stage of parenthood.<sup>2</sup> Daughters inherit as well as sons, and sons inherit equally or, if unequally, the inequality is due to personal needs or qualifications more than to external circumstances. As we shall have occasion to see later, as long as a proprietary character attaches to women, they are naturally, either as daughters or wives, more or less excluded from inheritance. They are rather inherited. When they do inherit, frequently implicit in the custom is the idea that they are conveyers of family property, so to speak. A clear expression of this idea is the endogamous marriage restriction frequently put upon

Inheritance by  
offspring

By daughters

Marriage of  
heiresses

<sup>1</sup> See p. 301.

<sup>2</sup> See pp. 273-4 for tendencies against individual property holding in ethnic or gentile society.

	<p>heiresses. In unequal inheritance between sons and daughters, it may be customary for the woman to inherit only in the absence of men. Again she may only receive a smaller portion or she may have the enjoyment only of the inheritance during her lifetime or she may share in the personal and be excluded from the real property. Inequality of inheritance by sons may be based on order of birth or on the conjugal status of the mother. In the first case, the eldest son (primogeniture), the youngest son (borough-English), or more infrequently, a son in some other arbitrary position in order of birth may inherit. In the second case, the son of the principal wife may inherit irrespective of the order of birth. In all cases the exclusion of the other sons may be only partial or it may be total. Cases of equality of inheritance (gavel-kind) by sons seem to occur under all systems of family organisation, nevertheless, taken with other facts, the custom is one of the criteria of highly developed parenthood. Sons or daughters may be disinherited at parental pleasure or only for stated offences and by a prescribed procedure. In considering descent and kinship groups we shall return to the subject of inheritance in other connections.</p>
Inheritance by sons	
Primogeniture	
Borough-English	
Dependent upon position of mother	
Gavel-kind	
Disinheritance	
Mixed stages of traits	<p>These stages of parenthood are not mutually exclusive, <i>i. e.</i>, educational methods characteristic of one stage will be found in groups where parenthood is on the whole in another stage. Practices for the good of offspring solely or combined with those for the good of parents or group occur in all stages. In the same community different families may be in different stages, or in the same family methods belonging to different stages may exist side by side, the method</p>



of one parent differing from that of the other, or the same parent practising different methods.

In this connection we should note certain customs which are more or less peculiar to the first two stages, but which are, nevertheless, either indicative of or likely to lead to parental sympathy.<sup>1</sup> To be considered from this point of view are various kinds of birth and pregnancy taboos, including sexual abstinence during pregnancy or lactation period, customs of bodily mutilation and couvade practices, teknonymy, ceremonial mourning at the death of offspring, and the performance in both the early and later life of the child of innumerable good-luck-bringing practices.

Customs indicative  
of parental  
sympathy

During pregnancy and birth mother and child are, in primitive thought, particularly subject to the working of both malevolent and benevolent spirits. A great variety of charms is in vogue to ward off the influence of the evil and attract that of the good spirits. Allied to such charms as an expression of the same kind of animistic<sup>2</sup> thought is the practice of *couvade*.

Pregnancy and birth  
taboos

*Couvade* is the name given to various lying-in practices through which at child-birth the father imitates or substitutes himself for the mother. He may for a stated time refrain from all exercise, from certain kinds of food, from exposure, etc., or he may actually take to his hammock, mat, or bed. Special taboos may also affect the father during the whole period of the mother's pregnancy or lactation. He may have to avoid dangerous forms of hunting or fighting, or he may not

Couvade

<sup>1</sup> This does not mean that they necessarily originated in parental sympathy.

<sup>2</sup> See p.



venture far on the water. One or both parents<sup>1</sup> may have to avoid eating either, during the mother's pregnancy or during the lactation period, the flesh or parts of the flesh of certain animals, of animals killed in special ways or by special persons, or of pregnant animals. Parental conduct during pregnancy and child-birth is not only thought to effect the child's health or physical development; it is also thought to influence his mind or character. For this reason certain animals, for example, are not eaten, otherwise the child would come by their undesirable traits, by cowardice, stupidity, etc. Again, should the mother cry out in child-birth, the child would be lacking in endurance. Couvade or *sympathetic* practices are sometimes confined to the birth of the first child. Unlike the taboos we have been considering, the practice of sexual abstinence during pregnancy and lactation, to which we have already referred in other connections, is sometimes (in the case of abstinence during lactation, at any rate) based on observation of fact. During pregnancy the milk supply either ceases or is much impoverished. The occurrence of pregnancy, therefore, during the period when an infant is still dependent upon mother's milk is decidedly injurious.<sup>2</sup>

Sexual abstinence  
during pregnancy  
and lactation period

Taboo practices by the parents for the good of offspring likewise occur at later periods in the child's life. Forms of fasting may be observed when the child is ill or at initiation or marriage. Fasting may also be prac-

Mourning practices

<sup>1</sup> The original term applied only to the father, but as a matter of fact, it is difficult, if not impossible, to differentiate between the parents in many cases of the performance of this form of *sympathetic magic*.

<sup>2</sup> This restriction is also of interest inasmuch as it is also, at times, an expression of solicitude for the mother. It is also an expression of a type of self-control which plays a very important part in social development.

tised after the death of a child. Portions of the body of a deceased child or articles of its clothing, etc., may be preserved or carried about by the parents. Special clothes or badges, etc., may be worn by the parents or periods of seclusion observed by them. Sometimes these mourning practices for offspring are similar to the general mourning rites or taboos prevailing in a given group; sometimes they appear, on the other hand, to have a special significance. The naming of children is always a significant fact. As we shall see later, it is commonly indicative of the way in which descent is reckoned. In the so-called custom of teknonymy, however, instead of offspring receiving names from parents, parents are named after offspring. (Sometimes the parents of a new-born child are given a *status* name expressive of the fact.) Again the giving of particularly auspicious names to offspring, saint or hero names, for example, points to parental sympathy.

Teknonymy

Auspicious names

Customs of mutilating the body of the infant or child are widespread. Among them are boring the nose, lips, ears, and cheeks, flattening the nose, deforming the skull, feet, fingers, etc., knocking out or sharpening the teeth, the excision, circumcision, or infibulation of the external male or female generative organs, tattooing, scarification, etc. Cutting the hair or nails may also be done ceremonially. There is much uncertainty about the origins of these customs; but whatever their origins, they are always thought to be of benefit in some way or other to the child upon whom they are practised. Sometimes they aim to improve his or her appearance. Sometimes, as in the case of operations upon the sex organs, they are thought of as a

Mutilation customs

necessary preparation for marriage, or, as a means of complying with a social requirement of chastity before marriage. Again they may be, particularly when they occur at initiation, distinctly rites of group membership and may often have to be considered as group or kinship, rather than parental, functions. Unfortunately the character of the actors in the ceremonial, whether parents, clansmen, group elders, etc., is frequently unnoted by ethnographers.

#### Lucky practices

Besides the aforesaid customs, a great variety of beliefs, many of which are plainly animistic, are held and acted upon by parents, or carried out by their agents for the good of offspring. Horoscopes are cast, amulets worn, religious sacrifices made, and trees planted for the child; the child's hair, nails, skin, clothes, etc., are disposed of after a prescribed fashion. The child is fed, decorated, sung to, anointed, besprinkled, put to sleep, held, washed, exercised, doctored, etc., in propitious or evil-deterrent ways.

#### Differences in education of boys and girls

Home education differs according to sex. It is important to note carefully the different ways in which boys and girls are brought up, as this differentiation has a marked influence upon the family as well as upon the social organisation in general. It is also important to note the respective parts played by father and mother in home education. After a certain age, anywhere from five to twelve, the daily association of boys with their mothers and sisters commonly lessens or ceases altogether and they begin to accompany their fathers. *Habitual avoidance* of mothers or sisters may even be required at a certain age.<sup>1</sup>

#### Avoidance of female relatives

<sup>1</sup> For a fuller discussion of the custom of *avoidance* see p. 170.

Here, as before, expressions of sympathy and educational efforts on the part of parents may be supplemented or substituted for by a kinsfolk circle under ethnic organisation or by State, Church, guild, or philanthropic society under civil organisation; it is important to note in the study of any society in what ways parental obligations of education are shared in by other agents.

Educational agents  
other than parents

## NOTE A

## PARENTAL AFFECTION, INDULGENCE, NEGLECT, ETC.

(In primitive groups) Steinmetz, *Das Verhältnis zwischen Eltern und Kindern bei den Naturvölkern* in *Zeitschrift für Socialwissenschaft*, 1898, pp. 607-631

*Ib.*, Ploss, *Das Kind*, ii., 333-345.

(Among lower economic classes in civilisation) Wolf, *Das Verhältnis von Eltern und Kindern bei den Landvolk in Deutschland* in *Zt. f. Soc.*, 1898, pp. 715-722.

(*Ib.*) Booth, *Life and Labour in London*, ix., 435; x., 42-43.

(*Ib.*, parental neglect) *Report of Inter-Departmental Committee on Physical Deterioration*, London, 1904, pp. 47-57.

## IMITATION-TRAINING AND THE ADAPTATION OF OFFSPRING TO ENVIRONMENT.

Tarde, *The Laws of Imitation*, New York, 1903, chaps. vi. and viii.

Baldwin, *Mental Development in the Child and the Race*, New York, 1903, pp. 349-366.

Butler, *The Meaning of Education* (first address), New York, 1898.

## PARENTAL DISCIPLINE.

Steinmetz, *Ethnologische Studien zur ersten Entwicklung der Strafe*, ii., 179-253.

Ploss, *Das Kind*, ii., 345-367.

Garcilasso de la Vega, *The Royal Commentaries of the Yncas*, in Pub. of the Hakluyt Society, London, 1869, i., 145-146, 315-317.

## FILIAL VIRTUE DUE TO THE GROUP.

*Lt Kî* (Sacred Books of the East), xxviii., 66-67, 217, 226-238, 419.

## PREGNANCY AND BIRTH TABOOS.

Skeat, *Malay Magic*, London, 1900, pp. 332-352.

## COUVADE.

Ling Roth, *On the Signification of Couvade*, in *The Journal of Anthropological Institute of Great Britain and Ireland*, xxii, (1893) 204-241.

Starcke, *The Primitive Family*, app. xvii.

## SYMPATHETIC TREATMENT AND DOCTORING OF CHILDREN.

Ploss, *Das Kind*, ii., 192-241.

## MUTILATIONS, etc.

*Ib.*, i., 289-394.

## CEREMONIAL BATHING, ANOINTING, etc.

*Ib.*, i., 256-287.

## SEPARATION OF BOYS AND GIRLS.

Crawley, *The Mystic Rose*, pp. 215-221.

## NOTE B

## THE ORIGIN AND MEANING OF COUVADE.

Animistic hygiene : An outcome of the primitive mental state "in which man does not separate the subjective mental connection from the objective physical connection." Also expressive of the primitive conception of parentage through the father only. Tylor, *Researches into the Early History of Mankind*, London, 1870, pp. 297-300. Symbolic of transition from a maternal to a paternal system. Tylor, *On a Method of Investigating the Development of Institutions ; Applied to Laws of Marriage and Descent*, in *J. A. I.*, xviii., 256.

The practice is based on the idea that the acts or dieting of the father will affect the child. A person takes on the characteristics of animals that are eaten. Lubbock, *The Origin of Civilisation and the Primitive Condition of Man*, London, 1870, p. 12.



A symbolic representation of the physiological relation between father and offspring in distinction to original mother-kinship. Wilken, *De Couvade bij de Volken van d'n Indischen Archipel (Bijdragen tot de Taal-Land- en Volkenkunde van Nederlandsch-Indië)* 5e vol., *Greeks iv*.

*Ib.*, Bachofen, *Das Mutterrecht*, Basel, 1897, p. 256.

Belongs to the period of human development characterised by belief in magic. Matronymy and the transition from matronymy to patronymy are coincident but not at all causal phenomena. Ling Roth, *On the Signification of Couvade* in *J. A. I.*, xxii., 224-240.

An expiatory offering to the malevolent spirits which threaten the child. Hellwald, *Die menschliche Familie*, Leipzig, 1889, p. 362.

Redemption sacrifice rendered by the father in place of the actual sacrifice of the first-born. Lippert, *Die Geschichte der Familie*. Stuttgart, 1884, pp. 213 ff.

Through conjugal sympathy husband substitutes himself for wife to ward off evil influences from her. Crawley, *The Mystic Rose*, London and New York, 1902, p. 425.

An outcome of husband's sympathy with wife. Cases have been observed in which the husband experiences nausea during his wife's pregnancy. Féré, *Contribution à la pathologie de la sympathie conjugale ; une interprétation physiologique de la couvade* in *Comptes Rendus Hebdomadaires des Séances de la Société de Biologie*, Paris, 1899, p. 258.

In no sense an imitative act of substitution ; for among primitive peoples the mother's delivery is not accompanied by a confinement. It indicates a realisation of a physical but not necessarily blood relation between father and child and the obligation upon the father to maintain the child in sound health. It is the sign not of a developing patronymic system, but of a developing patriarchate. Dargun, *Mutterrecht und Vatterrecht*, Leipzig, 1892, i., 18-28.

A practice for the good of the child ; by it the father's power of endurance is assured to the child. Starcke, *The Primitive Family*, p. 52.

An expression of parental sympathy and sense of responsibility. Ploss, *Das Kind*, i., 153-160.

## THE ORIGIN AND MEANING OF TEKNONYMY.

The father is treated as a stranger until the birth of the child. This gives him a status which the new name expresses. Tylor, *On a Method*, etc., pp. 248-250.

Indicative of a transition from matronymy to patronymy. The father takes the name of his son and resigns his rank and property in the son's favour in order to guarantee his own son's instead of his sister's son's inheritance. An instance of the fondness of the savage to call himself after any new and valued acquisition. Steinmetz, *Ethnologische Studien zur ersten Entwicklung der Strafe*, ii., 1236-1248.

The name being in primitive thought a vital part of an individual, the parents take the child's name to protect him. This renaming of the parents also confirms their mutual conjugal ties. Crawley, *The Mystic Rose*, pp. 431-432.

## THE ORIGIN AND MEANING OF CIRCUMCISION, ETC.

A token of tribal membership. Lippert, *Die Kulturgeschichte*, Leipzig and Prag, 1886, ii., 71-72.

A means, like tattooing, of sexual attraction. Westermarck, *The History of Human Marriage*, pp. 201-206, also pp. 168-182.

A preparation for marriage, expediting puberty. Mucke, *Horde und Familie*, Stuttgart, 1895, pp. 79-80.

## NOTE C

Tabulate groups in which parental control is on the whole an expression of parental ownership, and groups in which it is on the whole a purposive means of education, giving reasons for your classifications. Describe in as many cases as possible the treatment of well-known *innovators* by their family. Study the character of the agent or agents in mutilation practices. The history of *hereditary* crafts and professions. Describe beliefs and practices in various economic and cultural groups in modern civilisation indicative of the prevailing type of parenthood. Make a comparative study of groups in which *couvade* or *sympathetic* practices are confined to the birth of the first child. Describe animistic notions in groups in modern civilisation in regard to pregnancy, birth, and bringing-up in general of children.

Make a comparative study of conjugal abstinence practices during pregnancy and lactation period. Make a comparative study of mourning rites and tattoos in relation to deceased offspring; of mutilation practices, indicating when possible their object. Describe differentiation in *home education* according to sex in groups in modern civilisation. A thorough study of ceremonial avoidance in connection with endogamous and exogamous marriage rules (follow Tylor's method).

## NOTE D

### YAHGAN :

Parents very fond of offspring x., 331.

Girls learn at an early age to make baskets, to weave fishing nets, to paddle, etc. Little boys lose no time in acquiring skill in throwing harpoons and stones, in making harpoons, etc. p. 171.

In the lack of surviving husband or wife, eldest son inherits. x., 334.

Both parents take certain precautions in their diet, thinking that certain things would injure child. Customary for them to rest one or two weeks after the birth. vii., 170. If a suckling fall ill, always attributed to a food eaten by mother. For this reason she abstains from whale fat. vii., 171

Parents of a new-born child called *Yimbána*. vii., 170

### CENTRAL AUSTRALIANS:

To their children they are with very rare exceptions kind and considerate, carrying them when they get tired on the march, and always seeing that they get a good share of any food. However the native is liable to fits of sudden passion, and in one of these, hardly knowing what he does, he may treat a child with great severity. pp. 50-51.

The children go out with the mother and, from the moment they can toddle about, they begin to imitate the actions of their mother. In the scrub a woman will be digging up lizards or honey ants, while close by her small child will be at work, with its diminutive pick taking its first lessons in what, if it be a girl, will be the main employment of her life. p. 27.

If a woman eat meat early in pregnancy, the unborn child is

supposed to resent it by causing sickness. During first three or four months, husband does not kill any large game, otherwise sickness or sufferings of mother would be largely increased. p. 471.

During part of a boy's initiation ceremonies his mother must have no sexual intercourse with his father, otherwise the boy would grow up bad, too much given to sexual pleasures. p. 250.

Circumcision and subincision are practised at initiation. pp. 213 ff. A magic ceremony to promote the growth of a girl's breasts is practised. After it a girl's mother makes a separate camp for her to live in for a time. pp. 459-460.

An operation called *Atna-ariltha-kuma* (*atna*, vulva; *kuma*, cut) is performed on marriageable girls. p. 93. Nose-boring is performed on boys, also on girls after marriage. p. 459. A ceremony of knocking out a tooth is performed at various ages upon both sexes among groups inhabiting a certain region, called rain country. pp. 450-451.

After the end of the cord falls off, mother swathes it in furs and hangs it around child's neck. Supposed to facilitate growth of child, to avert illness, and to deaden to child the noise of the barking of the camp dogs. p. 467.

#### POINT BARROW ESKIMO:

Affection of parents for their children extreme. Though greatly indulged, children are very obedient. p. 417.

Young children seem to receive little or no instruction except what they pick up in their play or from watching their elders. p. 417.

Girls' chins are tattooed when they become marriageable. A few little girls had a single line on the chin. p. 139. Nearly all the women and girls perforate the lobes of the ear for earrings. p. 142. At puberty the lips of the boys are incised for labrets. p. 143.

#### BEHRING STRAIT ESKIMO:

In one case a small ivory carving of a white whale was placed in new-born child's mouth, so as to feed him upon something, according to the father, that would make him grow up a fine hunter. The shaman sang for half an hour over the boy to make him stout-hearted and manly. p. 290.

Boys at puberty wear labrets. p. 48. Women are tattooed. p. 50. The septum of little girls is pierced and they wear nose beads until maturity. p. 52.

CENTRAL ESKIMO:

Children treated very kindly; not scolded, whipped, or subjected to any corporal punishment. p. 580.

As a great part of personal property is destroyed at death, objects of inheritance are few,—gun, harpoon, sledge, dogs, kayak, boat and tent poles of a man, and lamp and pots of a woman. The first inheritor is eldest son living with parents, sons and daughters in separate households do not share. pp. 580–581.

After childbirth, mother not allowed for a year to eat raw meat or part of any animal killed by being shot through the heart. Cumberland Sound: she must not eat for five days anything except meat of an animal killed by her husband or by a boy on his first hunting expedition. She must keep a little skin bag hung up near her, into which she must put a little of her food after each meal, having first put it up to her mouth. This is called laying up food for the infant, although none is given it. p. 611.

After death of infant, mother must keep her head covered for a year. Boots of the deceased always carried about by parents when travelling, and whenever they stop these buried in snow or under stones. Neither parent may eat raw flesh during the year. pp. 611–612.

Girls are tattooed when about 12 years old. p. 561.

MELANESIANS:

Lepers' Isl.: Women do not succeed to land, but have a right to a share in the produce of their father's gardens, which their brothers are considered to hold partly for them. A man's garden-ground goes to his sons. They arrange the division of it among themselves. p. 67.

Northern New Hebrides: The son does not inherit chieftainship, but he inherits, if his father can manage it, what gives him chieftainship—his father's charms, magic songs, stones and apparatus, and his knowledge of the way to approach spiritual beings, as well as his property. p. 56. [See pp. 309–10 for the passing of succession by nephews to that by sons.]



Banks' Isls: Both parents eat only what if taken by the child when it is born, would not make it ill. Before birth of first child, mother must not eat fish caught by the hook, net, or trap. After birth of first child, father does no heavy work for a month. After birth of any of his children, he takes care not to go into those sacred places into which child could not go without risk.

Araga: After birth, father must not eat shell-fish or other beach produce, for infant would suffer from ulcers.

Lepers' Isl.: Father very careful for ten days; does no work, will not climb a tree, or go far into the sea to bathe, for if he exerts himself, the child will suffer. San Cristoval: Father lies in after childbirth. pp. 228-229.

No girl thought marriageable unless tattooed. p. 237. Circumcision has been introduced into Pentecost and Aurora. p. 234.

Saa: When a new-born infant is eight or ten days old, a sacrifice is made to family ghost to provide against misfortune. p. 230.

#### EWÉ-SPEAKING PEOPLES:

A native proverb: Follow the customs of your father. What he did not do, avoid doing, or you will harm yourself. p. 263.

A wife's property passes at her death to her children. p. 216.

A woman may not admit the male during pregnancy or while suckling. p. 206.

As soon as a child is born a priestess offers sacrifice to the god Legba to prevent his harming mother or infant. p. 153.

#### TSHI-SPEAKING PEOPLES:

After birth a child has charms bound around it to avert misfortune, p. 233.

#### YORUBA-SPEAKING PEOPLES:

Daughters have no inheritance in their father's house; but they divide between them their mother's property. When a man dies his sons divide all his property between them. p. 177.

During lactation period, wife must not cohabit with husband. p. 185.

Seven days after birth for a girl, nine for a boy, sacrifices are made. p. 152.

## THOMPSON RIVER INDIANS:

Until puberty children allowed to play or do almost as they liked, only two restrictions laid on them: made to rise early and wash frequently in cold water, and not permitted to play after sunset or make too much noise. They were often scared into quietness by being told, "The owl will come and take you." p. 308. Twice during the winter boys and girls had to pass through an ordeal called "whipping the children." An elderly man armed with a switch would enter the winter-house and invite some one to pick berries off the switch. If the older people did not interfere either by "picking berries" or taking a thrashing, each child about the age of eight years and upward had to come forward one at a time, dance, sing, and go through the motion of picking berries into a basket. If all did this, the flogger went away; but if any refused, either through fear or bashfulness, or in order to show courage, they had to come forward, and were struck four times over the bare back. Sometimes a lad asked for and took more than four lashes. Often his whole body was covered with blood. He had done a great feat. A boy who was not bashful, but went and met the flogger as he came into the house, made a speech to him, and holding out his hands, blessed him, was generally exempt from the flogging. pp. 309-310.

A pregnant woman not allowed to touch with her hand or eat the flesh of the porcupine, or anything killed by an eagle or hawk. If she did her child would resemble them in form, features, or habits. If she ate flesh of the hare, the child would have a hare-lip. She must not look on when a corpse was being prepared for burial; if she did, the navel-string would become twisted around the child, like the string tied around the corpse. She could eat nothing forbidden to her husband. He must not hunt the black or grisly bear, nor eat their meat, else the child would cease to exist in the womb or be still-born. He must not eat or hunt porcupine, hare, otter, wolf, coyote, marten, badger. Hunting or eating willow-grouse or fool-hen was forbidden, that the child might not be foolish. He must not hunt or eat squirrel, else the child would cry much when young. He must not kill snakes of any kind; if he did, the child would resemble a dead person or ghost. Before the birth of the first child, both parents had to bathe often in cold water and to sweat-bathe. They had to pray

to the Dawn of the Day and sometimes to the Water. pp. 303-304.

Formerly after childbirth a woman separated from her husband 3 or 4 months, now 6 weeks. p. 305.

Shortly after birth a child's nose was pulled to prevent it developing a "pug" nose. Its eyelids were pulled up and down that it should have nice, round, open eyes. All parts of the body were pulled or rubbed by father or mother so that the limbs, etc., should be well formed. As the features were pulled and shaped would the child be pretty or ugly. p. 308.

Immediately after the birth, father fired an arrow into the air to prevent the child's navel from swelling. The piece of the infant's navel string outside of the ligature, after dropping off, was sewed up by the mother in a piece of embroidered buckskin and tied to the head of the cradle. If this piece were lost, the child would in later life become foolish or bad or would be lost hunting or travelling. pp. 304-305. The father placed a miniature bow and arrows in new-born son's hands, saying, "May you use them well in after years. p. 304. A new-born child washed in water in which tamarack-bark water had been boiled to make it strong in after years. p. 305.

#### KABYLES :

A nursing mother has right to refuse to cohabit with husband if she thinks it would injure child. ii., 170.

#### ANCIENT ARABS :

God instructs you concerning your children; for a male the like of the portion of two females. Pt. i., p. 73.

#### ANCIENT HEBREWS :

An angel of the Lord predicted the birth of a son unto the wife of Manoah and said, Drink not wine nor strong drink and eat not any unclean thing. Judges xiii., 2-14.

David's child was sick and David besought God for the child. He fasted and lay all night upon the earth. ii. Sam. xii., 16.

#### ANCIENT BABYLONIANS :

An undowered daughter receives the portion of a son. At her death it goes to her brother. § 180. An undowered, god-given woman inherits one third the portion of a son. After her death it belong to her brothers. § 181. If a priestess of Marduk, she

may give it to whomsoever she please. § 182. A woman's dowry belongs to her children. § 162.

If a man present field, garden, or house to his favourite son and write for him a sealed deed; after the father dies, when the brothers divide, he shall take the present which the father gave him, and over and above they shall divide the goods of the father's house equally. § 165. The children of different wives shall inherit the dowries of their respective mothers and divide equally their father's goods. § 167. If a man set his face to disinherit his son and say to the judges: "I will disinherit my son," the judges shall inquire into his antecedents, and if the son have not committed a crime sufficiently grave to cut him off from sonship, the father may not cut him off. The father may cut him off only for the second offence. §§ 168-169.

#### ANCIENT HINDUS:

One's son must be considered as one's own body. One's daughter as the highest object of tenderness. iv., 184, 185. For defaming one's son a fine of 100 panas. viii., 275. A man may not quarrel with his son or daughter. iv., 180, 181. Casting off one's son a minor offence causing loss of caste. xi., 60, 67. Also punished by king by a fine of 600 panas. xiii., 389.

Before the navel-string is cut, the Gâtakarman (birth-rite) must be performed for a male child; and while sacred formulas are being recited, he must be fed with gold, honey, and butter. ii., 29. The Nâmadheya (rite of naming) should be performed on the tenth or twelfth day or on a lucky lunar day, in a lucky muhûrta, under an auspicious constellation. ii., 30. In the fourth month the Nishkramana (first leaving of the house), in the sixth month the Annaprâsana (first feeding with rice), should be performed, and optionally any other auspicious ceremony required by the custom of the family. ii., 34. The Kûdâkarman (tonsure) must be performed for the sake of spiritual merit by all twice-born men in the first or third year. ii., 35.

#### ANCIENT CHINESE:

He who for three years does not change from the way of his father, may be pronounced filial. xxviii., 290-291. What his parents loved, a filial son will love to the end not only of their lives but of his own life, and what they revered, he will rever-



ence. He will do so even in regard to all their dogs and horses and how much more so in regard to the men whom they valued. xxvii., 467-468. The physic of a doctor, in whose family medicine has not been practised for three generations at least, should not be taken. xxvii., 114.

For the new-born son of a ruler from all the concubines and other likely individuals there was sought one distinguished for her generosity of mind, her gentle kindness, her mild integrity, her respectful learning, her carefulness and freedom from talkativeness, who should be appointed the boy's teacher; one was next chosen who should be his indulgent mother, and a third who should be his guardian mother. These all lived in his apartment in the palace. xxvii., 473. When the child was able to take its own food, it was taught to use the right hand. At six years they were taught the numbers and the names of the cardinal points. At eight, when going out or coming in at a gate or door, and going to their mats to eat and drink, they were required to follow their elders; the teaching of yielding to others was now begun; at nine, they were taught how to number the days. At ten, the boy went to a master outside, and stayed with him even over the night. A girl's governess taught her the arts of pleasing speech and manners, to be docile and obedient, to handle the hempen fibres, to deal with the cocoons, to weave silks and form fillets, to learn all woman's work, how to furnish garments, to watch the sacrifices, to supply the liquors and sauces, to fill the various stands and dishes with pickles and brine, and to assist in setting forth the appurtenances for the ceremonies. When a child was able to speak, a boy was taught to respond boldly and clearly; a girl, submissively and low. xxvii., 477.

Before his parents, a son may speak of the duty due to parents, but not of the gentle kindness due from them. xxviii., 290-291.

When a wife was about to have a child, and the month of her confinement had arrived, she occupied one of the side apartments, where her husband sent twice a day to ask for her. If he were moved and came himself to ask about her, she did not presume to see him, but made her governess dress herself and reply to him. After the birth, the husband fasted and did not enter the door of the side apartment. xxvii., 471. Among the common people who had no side chambers, when the month of confine-



ment was come, the husband left his bed-chamber, and occupied a common apartment. xxvii., 476.

After the end of the third month a day was chosen for shaving off the hair of the child, excepting certain portions,—the horn-like tufts of a boy, and the circlet on the crown of a girl. xxvii., 473.

PEOPLE OF THE UNITED STATES:

Municipal laws provide for the educational wants of infants,

§ 235.

All children, sons and daughters, inherit alike. § 273.

## LECTURE VI

### SEXUAL RELATIONS EXCLUSIVE OF MARRIAGE

Parental care and  
conjugal relations

THE nature of parental care is plainly and to a great extent affected by the nature of conjugal relations. The offspring of transitory sexual intercourse, for example, will have the care of one parent only—often even this will be lacking.<sup>1</sup> Moreover, even the single parent is unable to give as much care to offspring as she or he could do if living protected or assisted by a mate. The more lasting, harmonious, and devoted the coöperation of parents, the greater the chance of survival and development for offspring.<sup>2</sup> It may be well to note again at this point, however, a fact that has already been referred to in other connections, viz. : In almost all societies there are protectors and supporters of the young in addition to, or in place of, parents. So-called juridical parenthood, which embraces various forms of *adoption*, is, as we shall see later, a not uncommon fact. Under polygyny, the other wives of the father—the step-mothers, so to speak—may care for a child in the absence of its natural mother. In

Substitutes for  
parents

*Adoption*

Polygynous step-  
mothers

<sup>1</sup> See pp. 46, 47 for infanticide and artificial abortion in case of illegitimate offspring. In modern civilisation the death-rate of illegitimate children is always higher than that of legitimate, and the number of still-births is greater relatively out of than in wedlock.

<sup>2</sup> See p. 45 for infanticide as the result of the death of father or mother or of desertion by the father. See pp. 46, 47 for infanticide and abortion as the result of jealousy or of spite against a husband.

case of divorce, or in case the husband live with his wife's kin, the mother's father, brothers, or clansmen may wholly or partially take the father's place. Under the avunculate,<sup>1</sup> the maternal uncle may undertake in lieu of the parents the discipline or support of the children. Grandparents, elder brothers or sisters, retainers, slaves, servants, etc., may also be substitutes. Church or State may under certain circumstances substitute for parents.

Maternal kin

Kindred, servants,  
etc.

Church or State

In considering physiological facts of parenthood we noted the fact that among several species of fish there is no contact whatsoever between male and female. The ova are deposited by the female and subsequently fertilised by the male. We also learned how important is the viviparous habit in the preservation of offspring. This depends, of course, upon internal fertilisation, and internal fertilisation implies contact, however temporary, between male and female. Even among a few species of amphibia and reptiles male and female remain together after the act of propagation. Among birds the pairing season is notably prolonged, lasting from a few weeks to two or three months among the lower species and for life among many of the higher species. Many birds are polygynous, *i. e.*, mating with more than one female at a time. Lifelong union is not known among the lower mammals. As a rule, couples remain together only during the fixed pairing season. Among mammals, again, polygyny is frequent, although monogamy also occurs, particularly among non-gregarious mammals. Evidence about the conjugal habits of monkeys and anthropoid apes

Sexual intercourse  
among lower forms  
of life.

Among birds

Among mammals

<sup>1</sup> See pp. 279-80.

is somewhat conflicting, but several species appear to mate for prolonged periods. The gorilla, for example, lives in families consisting of a male and females, offspring and wives, of various ages. Certain anthropoids are also monogamous. Comparing these facts with certain facts about parental care among animals, we see that there is a marked correspondence from order to order between extent of parental care and duration of sexual intercourse.

Elimination of a distinct pairing season among mankind

In comparing the sexual relations of human beings with those of animals, one of the most notable dissimilarities is the lack among mankind of a distinct pairing season. Periodicity of rut among animals is an outcome of natural selection. The rut in all animal species is so timed that the birth of offspring occurs at that season of the year which is most propitious to the survival of the offspring of the respective species. This provision became unnecessary for man as man grew more and more independent of his natural environment. Traces of a fixed human pairing season may probably be seen, however, in certain communities in the custom of celebrating marriages and in the occurrence of a maximum birth-rate at certain times of the year. The survival of periodic festivals at which utter sexual license prevails is another case in point. The suppression of periodicity in sexual impulse seems to partly account for the existence among mankind of much sexual activity of non-reproductive character.<sup>1</sup> The elimination of a fixed pairing season may also account, in part, for the development of permanence in conjugal relations. This whole subject, however, needs careful investigation.

Alleged traces of a human pairing season

Effects of elimination

<sup>1</sup> Non-reproductive sexual activity exists, but only to a very limited extent, among animals.

## Sexual Relations Exclusive of Marriage 115

By marriage we mean the living together of male and female after the act of propagation until the birth of offspring.<sup>1</sup> Before considering sexual relations as thus limited, let us briefly consider those sexual relations that are excluded from the definition. Such relations affect marriage itself to a greater or less extent.

Definition of marriage

There is no known human society in which marriage as we have defined it does not exist, but forms of sexual promiscuity occur in many societies together with marriage.

Sexual intercourse exclusive of marriage

There are few communities in which sexual promiscuity is viewed in the same way for both sexes or for the married and unmarried.

In a few cases absolute chastity is required of unmarried men, but, as a rule, they are required only to respect the sexual rights of other men. In many groups unmarried girls are also free in sexual matters. Lack of chastity may not be considered in marrying them; it may be even thought of as a desirable trait in a bride, the number of her accepted suitors being proof of her charms. Among by far the greater number of peoples, however, female chastity before marriage is required. Unchastity is punished by death, mutilation, whipping, exile from family, fines, etc. Punishment may follow upon the first offense or only upon repeated offenses. The demand for chastity is seen most plainly in the seclusion or sex segregation of unmarried women and in marriage contracts. After a certain age girls may not be allowed to speak

Requirements for unmarried men

Lack of female chastity tolerated

Punishment for unchastity

<sup>1</sup> This is, with a minor change, Westermarck's definition. *History of Human Marriage*, pp. 19-20. It is important for the student to note as well various juridical definitions of marriage, *i. e.*, the forms of sexual intercourse that are sanctioned as marriage by particular communities.



to or associate in any way with men who are not kinsmen. They may be restricted from leaving home unaccompanied by an elder woman. Taboo upon knowledge of sex matters may apply particularly severely to girls. (It should be noted of course that in many groups such taboos and ceremonial avoidances may be wholly or primarily observed for reasons other than the preservation of chastity.<sup>1</sup>) Unchaste brides may, in some cases, bring no bride-price, or their bride-price may be lower than that of chaste brides. If at marriage the bride is found to have been unchaste, she may be repudiated and the bride-price forfeited. Ceremonial consisting of a display of the so-called *tokens of virginity*, or hymen, is common in this connection. The custom of betrothal frequently indicates a demand for chastity in brides; chastity may be strictly required of betrothed girls, whereas sexual freedom is allowed to the unbetrothed. Chastity is, in a few cases, also required of the betrothed youth.

Effect on bride-price

Repudiation of hymenless bride

Betrothal to insure chastity

Intolerance of sexual freedom after marriage

Treatment of adulterer

Punishment of adulteress

Sexual freedom before marriage may be tolerated in groups where after marriage it is severely condemned. This distinction even applies, although to a much slighter extent, in the case of married men. The adulterer is rarely directly punished for misbehaviour to his own wife, but his act is sometimes ground for divorce or reprobation. There are, however, no groups in which adultery by the wife is not condemned.<sup>2</sup> The adulteress may be killed, mutilated—cutting off

<sup>1</sup> See p. 170.

<sup>2</sup> Note that there are groups, however, where the wife may leave her husband for another man at pleasure. The former may have to let her go with or without compensation. (Sometimes her second has to pay over to her first husband the original bride-price.)

the nose or ears or hair are common forms of mutilation or disfigurement,—beaten, sold, imprisoned, given over to violation, or divorced. When divorced she may be given to the seducer with or without payment of a fine or the original bride-price, or she may be forbidden to marry the seducer. She may be free or she may be forbidden to remarry, or her remarriage may be optional with the husband divorcing her. Of interest here are the methods taken to prevent adultery by the wife. Younger wives may be guarded by elderly female relatives, by eunuchs, etc. More or less complete seclusion from other men may be enforced. At marriage a woman may be deprived of her ornaments, her hair may be cut, or certain features veiled or disfigured. When the seclusion or sex segregation of wives is required, acts of a more or less intrinsically trivial nature may be interpreted as adulterous, *e. g.*, speaking to another's wife, touching her garment, associating with her at certain times or places, etc.

Remarriage

The rapist or seducer may be punished by death, blows, enslavement, exile, fines, etc. He may be obliged to marry the unmarried girl, paying a bride-price if customary. On the other hand, marriage with him may be forbidden. His own daughter or wife may be violated in revenge. Violation of a betrothed girl may have more serious consequences than that of an unbetrothed. No distinction may be made between rape and seduction based on the unwillingness or willingness of the woman, or, if the distinction is made, there may be a less severe, if any, punishment for seduction. Where the distinction is marked, an age, sometimes called *the age of consent*, is usually established below which a seduction is always accounted a

Punishment of rapist or seducer

In case the woman is betrothed

Distinction between rape and seduction

rape. The degree in which the seduced girl is held responsible for her seduction also bears of course upon this distinction. She may not be punished at all, or, as we have seen in considering unchastity in general, she may be whipped, disowned by her family, sold into slavery, forced into prostitution, or killed.

It should be noted here, as in other cases, that the punishment for illegitimate intercourse may vary from class to class in the same community. The adultery, for example, of a wife of a chief may be punished by death, whereas the same offense in the wife of a commoner may entail only a beating.

Violation as theft

When permitted

Because of male ownership of daughters and wives, ungranted sexual intercourse with them is readily viewed as a form of theft. When, on the other hand, the consent of the woman's owner is had, there is no offense. Defloration by kinsmen, wedding guests, priest, or over-lord as a preparatory marriage rite, and the lending of daughters or wives in sexual hospitality or at festivals, or hiring them out in prostitution, are cases in point.

Prostitution

Segregation of  
prostitutes

In many communities, certain women, either because they are cast off by their husbands or by male relatives or because of various other circumstances, are not considered the property of one man or group of men. They can dispose of their own persons for gain. Except in groups where prostitution is tolerated or even encouraged in unmarried women as a means of dowry-getting<sup>1</sup> or a source of family income, or, more rarely, in married women as a source of profit to their hus-

<sup>1</sup> In certain groups, sexual promiscuity before marriage is so extensive that, when accompanied by gifts from the indulged suitors, as frequently happens, it is difficult to distinguish it from prostitution proper.

bands, the prostitute is thought of, as a rule, as more or less unmarriageable. In her dress, dwelling-place, and opportunities in general for social intercourse she is a more or less segregated person and forms a class apart. This class may even be recruited through inheritance. Knowledge in modern times of the communicable nature of venereal disease has led several European nations to adopt a system of State inspection and licensing of prostitutes ("Continental system"). It is important to note the extent of the prevailing segregation in studying the attitude of the group towards prostitution.

In so-called temple prostitution women have been dedicated by their families to a deity to whose priests or worshippers they give themselves. (Parental ownership is seen also in the dedication which leads to religious chastity.) Sacerdotal celibacy is frequently accompanied by forms of sexual promiscuity and sexual license is not uncommon at religious festivals.

Religious prostitution

The treatment of children who are classed as illegitimate, the offspring of non-sanctioned sexual relations, is very significant of the group idea of marriage and of its attitude towards sexual intercourse exclusive of what it accounts marriage.<sup>1</sup> The illegitimate child may be killed, deserted (exposed), enslaved, stigmatised in various ways as an outcast, *i. e.*, deprived of name, right to inherit, right to claim support or recognition of any kind from father, etc. On the other hand, the father may be obliged to support it, or it may be adopted by the mother's kinsfolk or husband

Illegitimacy

<sup>1</sup> There are a few exceptions to this, inasmuch as, in some cases, promiscuity before marriage is tolerated providing pregnancy does not result, pregnancy under these circumstances being considered a flagrant disgrace.



It bearing upon  
parenthood

and in no way discriminated against. The treatment of illegitimates is still more significant for the light it throws upon prevailing notions of parenthood. The more or less harsh treatment of illegitimate children in all communities where illegitimate sexual intercourse is to any extent condemned, is evidence that the highest type of parenthood, or the stage in which the child is educated for his own sake, is not general.

Forms of so-called  
marriage excluded  
strictly speaking  
from our definition

*Part-time* and *term* marriages, marriages which are dissolved by death or divorce before the birth of offspring, including *trial* or *proof* marriages which are not made permanent, voluntarily and involuntarily childless marriages, are all excluded from our definition of marriage. Voluntarily childless marriage we have already referred to,<sup>1</sup> marriages dissolved by death before the birth of offspring and involuntarily childless marriage we need not consider, as other than social factors are in such cases of chief weight (barren marriage will, however, be referred to again as a cause for divorce), and the remaining forms of so-called marriage we shall discuss when we consider the forms and duration of marriage in our acceptance of the term.

#### NOTE A

##### SEXUAL INTERCOURSE AND MARRIAGE AMONG ANIMALS.

Hellwald, *Die menschliche Familie*, pp. 22-32, Leipzig, 1889.

Darwin, *The Descent of Man*, pp. 220-224.

##### A HUMAN PAIRING SEASON.

Westermarck, *The History of Human Marriage*, chap. ii.

See p. 49 also pp. 351-2.



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### TEMPORARY FORMS OF SEXUAL INTERCOURSE.

Post, *Grundriss*, etc., i., 17-30. *Familienrechts*, pp. 340-364.

Letourneau,<sup>1</sup> *The Evolution of Marriage and of the Family*, London, 1891, chap. iii. and pp. 56-69.

Spencer and Gillen, *Northern Tribes of Central Australia*, chap. iv.

Schmidt, *Jus Primæ Noctæ*, Freiburg im Breisgau, 1881, pp. 57-67. (Religious defloration, etc.)

Stiles, *Bundling*, Albany, 1871.

Ploss and Bartels, *Das Weib*, i., 539-554. (Prostitution, ethnographical data.)

Johnson, *The Social Evil*. New York and London, 1902, chaps. ii-iv and appendices. (Prostitution : ancient, mediæval, and modern forms.)

Booth, *Life and Labour of the People in London*, x., 121-132. (Prostitution in London.)

Lea, *Sacerdotal Celibacy in the Christian Church*, Boston, 1884, chap. xxi.

### NOTE B

#### THE ORIGIN OF PRE-NUPTIAL CHASTITY.

Early betrothal may have led to its demand. Kautsky, *Die Entstehung der Ehe und Familie in Kosmos*, xii., pp. 333-334.

#### THE ORIGIN OF RELIGIOUS CHASTITY.

In the gift of women to gods. Parsons. *The American Journal of Sociology*, March, 1906.

### NOTE C

Study the duration of marriage in groups showing traces of a fixed pairing season. Make a comparison of juristic definitions of marriage. Make a comparative study of seclusion and *avoidance* practices for unmarried women, indicating when possible the motive or motives for the practice. Describe the same practices in modern civilization, likewise existing taboos on instruction of girls in matters of sex. Study the history of punishment for adultery, noting in particular group participation both in explicit condemnation and in actual punishment. Make a comparative

<sup>1</sup> Note that his interpretations are always to be taken with much caution.

study of guards against adultery. Analyse the cases of wife-“guarding” to be found in modern civilisation and the acts that are condemned by public opinion as “improper” or “indiscreet” on the part of married women. Give the history of the distinction between rape and seduction. Make special studies of special points in the treatment of the illegitimate child. (There is no adequate history of illegitimacy.)

## NOTE D

## VEDDAHS :

Jealousy very strong. Wives and daughters kept away from other men. p. 462. Adultery rare. p. 458. Seducer killed by husband. p. 463. Sometimes guilty wife too. p. 464.

## YAHGAN :

Girls of 10 to 12 found to be no longer virgin. vii., 188. Girls free to act as they like. H. & D. vii., 378. Before a child is born, not unusual to see a girl change her husband several times. H. & D. vii., 378. Marriage appears not to be thought of as binding before birth of a child. H. & D. vii., 377. Outside of marriage, jealousy does not occur. H. & D., vii., 379.

Wife's adultery is often punished by husband, and often entails a certain amount of public disapproval. H. & D. vii., 378. Adulteress and her seducer punished by blows inflicted by husband or his relatives. Carrying off married women thought of as criminal. x., 335.

Certain unmarried women given to prostitution and to a certain degree held in contempt. *ib.*

## CENTRAL AUSTRALIANS :

If, rightly or wrongly, a man thinks his wife guilty of a breach of the laws which govern marital relations, then treatment of woman marked by brutal and often revolting severity. p. 50. If a man wishes to punish wife for supposed unfaithfulness, he may go to the Erathipa stone and, rubbing it, mutter, “That woman of mine has thrown me aside ; go quickly and hang on tightly” ; meaning that the child is to remain a long time in the woman, and so cause her death. p. 338. Some of the people of the Alcheringa do not undergo reincarnation ; called *Oruncha*, or devil men, mischievous creatures who when met out alone in the dark will carry off victims into the earth.

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Partly, no doubt, the idea is a creation of men of old to act as a wholesome check upon women who might be prone to wander away under cover of darkness from domestic hearth, and it does undoubtedly act as a strong deterrent to any wandering about at night by men and women alike. pp. 327-328.

To punish a man who has stolen a wife, and who belongs to a distant group or to one which is too powerful to allow matters to come to an open fight, two men, perhaps former husband and another, prepare a special implement of magic. It is sung over and left in sun for some days at a secluded spot. Every day the men sing to it and request it to go and kill the man who stole the woman. "Go straight; go straight and kill him." A noise like a crash of thunder may be heard, or a ball of fire streaking across the sky may be seen, and then they know that charm has succeeded. pp. 548-549.

A man may always lend his wife—that is, woman to whom he has first right—to another man, provided always he be her *Nupa* without the relationship of *Piraungaru* existing between the two, but unless this relationship exists no man has any right of access to a woman. p. 63. During an initiation, two men belonging to the resident group will determine, without saying anything previously to two visiting men, to lend their wives each to one of the latter. During the dance these two men will get up from the group of men watching dance and each one, taking a fire-stick, will give it to his wife, who is amongst the dancers. She knows what this means, and retires to some distance. Then the two men return to main group and, each going behind man to whom he desires to show attention, lifts him up by his elbows and informs him of his intention. The exchange or lending is merely a temporary one, and in this instance only takes place between those who are *Unawa* to each other. p. 267. When visiting distant groups, where, in all likelihood, a husband has no *Piraungaru*, customary for other men of his own class to offer him loan of one or more of their *Nupa* women, and a man, besides lending a woman over whom he has first right, will also lend his *Piraungaru*. p. 63. During an important corroboree, every day two or three women are told off to attend at the corroboree ground, and, with exception of men who stand in relation to them of actual father, brother, or son, they are, for time being, common prop-

erty to all the men present. p. 97. In Urabunna tribe, usual to send as messengers, when summoning distant groups, a man and a woman, or sometimes two pairs, who are *Piraungaru* to each other. After men have delivered their message, they take the women out a short distance from camp, where they leave them. If the members of the group decide to comply with their request all men, irrespective of class, have access to the women, otherwise the latter are not visited. Similarly, when a party of men intent on vengeance comes near to the strange camp of which they intend to kill some member, the use of women may be offered to them. If they be accepted, then the quarrel is at an end, as acceptance of this favour is a sign of friendship. To accept favour and then not to comply with desire of people offering it would be a gross breach of tribal custom. pp. 97-98.

When a girl arrives at marriageable age, man to whom she has been allotted speaks to his *Unkulla* man, and they, together with men who are *Unkulla* and *Unawa* to girl, but not including her future husband, take her out into the bush, and there perform operation called *Atna-ariltha-kuma* (*atna*, vulva; *kuma*, cut). When the operation has been performed the men have access to her. The bride's head is decorated with headbands and tufts of the tail tips of the rabbit-bandikoot, the neck with necklaces, the arms with bands of fur string, and her body is painted all over with a mixture of fat and red ochre. She is then taken to the camp of her special *Unawa*. On the day following the husband will most likely, though there is no obligation for him to do so, send her to the same men, and after that she becomes his special wife, to whom no one else has right of access. pp. 92-93.

#### POINT BARROW ESKIMO :

Promiscuous sexual intercourse between married or unmarried people or even among children appears to be looked upon simply as matter for amusement. p. 419. At Repulse Bay at certain times there is a general exchange of wives throughout the village, each woman passing from man to man till she has been through hands of all, and finally returns to her husband. p. 413. In one case a man borrowed his cousin's wife to go deer-hunting with him, as she was a good shot and a good hand at deer-



hunting, while his own wife went with his cousin on a trading expedition. On their return the wives went back to their respective husbands. p. 413. When a couple are more pleased with their new mates than the old, exchange is made permanent. p. 413.

BEHRING STRAIT ESKIMO :

During "asking" festival any man had a right to ask an unmarried woman to spend the night with him. p. 360. Frequently a man enjoys rights of a husband before living regularly with woman he takes for a wife, unmarried women being considered free to suit themselves. p. 292.

A husband may beat an unfaithful wife. He rarely avenges himself on man concerned. p. 292.

Common custom for two men living in different villages to enter into a covenant of brotherhood. The host then lends his wife to the visiting brother, and neither family knows who is the father of the children. p. 292

CENTRAL ESKIMO :

A man may lend his wife to a friend for a whole season or even longer, and men exchange wives in sign of friendship. p. 579. Visiting strangers receive a wife if host happens to have more than one. p. 581.

At the autumn religious festival held to drive away evil spirits men and women are paired indiscriminately, and for a day and night live in hut of woman as man and wife. p. 605.

WYANDOTS :

A maiden guilty of unchastity may be punished by mother or female guardian, but if crime is flagrant and repeated so that it become a matter of general gossip and mother fails to correct it, matter may be taken up by clan council women. p. 66.

An adulteress for first offense has her hair cropped, for repeated offenses her left ear cut off. p. 64.

MELANESIANS :

The giver of a feast, one of the great men, decides whether or not sexual license is to prevail. p. 27. New Hebrides: An allowed custom for men to carry off women who listen to singing at an initiation into the secret society of *gatu*, and ravish them. p. 87.



Probably no place in which common opinion approves the intercourse of unmarried girls and youths, though it allows it as a thing to be expected and excused. p. 23. In every island female chastity depended more or less upon whether family was considered respectable or not. pp. 236-237. Saa : A girl of a chief's family, if found pregnant, would be killed unless her paramour could pay enough for her to become his wife. p. 235. Virginity lacking, groom's friends will not pay what they promised. p. 239. Florida : A newly-married husband would often beat his wife to make her confess who her lover had been before marriage. In this circumstance and when husband observes that wife avoids a given man (indicating that he has been her lover) he demands money from him, and when that is paid, no more notice taken of matter. If money were refused, a quarrel would follow. pp. 242-243. Bastards generally very rare.

Formerly adulterer punished by death, but punishment very generally mitigated on payment of a fine. Saa : Adulteress dismissed and paramour punished with death, exile, or fines. Friends of husband and paramour will often fight about damages to be exacted. Banks' Isls. and Northern New Hebrides : Man shot or clubbed by husband or friends in first indignation and wife beaten, scolded and threatened with death, but compromise very generally effected by payment of money and pigs. p. 243. Motlav : Believed that a man given to adultery—among other crimes—is not allowed to enter *Panoi*, Paradise. p. 274.

Little doubt that sexual hospitality once common everywhere. Denied that it is now practised in Solomon and Banks' Isls. Not denied in Northern New Hebrides. p. 24.

Florida : For adultery or fornication within kin division, a woman would be appropriated by the chief. She lived in one of his houses and most of her earnings would be his. She was not particularly despised, but no one would go near her or talk to her without cause. When she had accumulated porpoise teeth and money she would be allowed to marry. Wango : Girls got money privately before marriage by prostitution ; also a class of unmarried girls and widows as prostitutes. Saa : A girl not of a chief's family might become a prostitute if not married by her lover. Sometimes a man allows his daughter to become a prosti-

tute to gain money. But such a one is thought a low character and will have little given for her if she is married. Santa Cruz Isls.: Public courtesans. Banks' Isls. and Northern New Hebrides: Public prostitutes unknown. pp. 235-236.

## EWESPEAKING PEOPLES:

Penalty for seduction the payment of amount of *head-money* that would have been demanded, and marriage; or a heavy fine without marriage, with alternative of enslavement. If woman seduced be a slave, seducer must pay a fine to her owner. If seducer be a slave, his owner must always pay compensation to girl's family, and if it be a family of rank, slave-seducer ordinarily put to death. p. 202. If tokens of virginity are found wanting, a bridegroom may repudiate bride and recover from her family his *head-money*. p. 201.

In theory adultery punished by death; but all capital crimes may be compromised by persons of wealth by paying indemnities. p. 223. Prior to 1818 Amazon army of Dahomi being made up chiefly of criminals, adulterous wives drafted into it. p. 183. In Dahomi, adultery is, in theory, punished by death or slavery. Among other tribes, except in extreme cases, by fine, chiefs having the privilege, rarely exercised, of putting to death. Fine varies according to husband's rank. If paramour cannot pay, husband may enslave him. If he be a slave, husband recovers from his owner, and if wife be a woman of rank slave-paramour put to death. If husband agree, paramour may take adulterous wife, refunding to husband *head-money* and all expenses incurred in her behalf. pp. 202-203. An offense punishable by fine to praise beauty of another man's wife, it being considered adultery by implication. p. 204.

Wife-lending practised and wife has no right to refuse. p. 202.

Most gods have women consecrated to their service as "wives." Their chief business is prostitution. God Khebioso said to have 1500 in Dahomi alone. p. 38. God Dañh-gbi has probably 2000. Married to him secretly in his temple, the priests consummating union. p. 60. In Dahomi estimated that every fourth woman is in service of gods. p. 139. In every town at least one religious institution in which best-looking girls, between 10 and 12, received. Remain 3 years prostituting themselves to priests and inmates of male seminaries, at end of novitiate be-

coming public prostitutes, not confining themselves, except theoretically, to male worshippers in temples. In Dahomi distinction between female servants of temple or priestesses and temple prostitutes (*Kosio*). Latter obliged to confine themselves to certain localities ; pay an annual tax to king ; price of their favours fixed by law and very small. p. 141. *Vodu-vio*, god-claimed children, may marry, but their husbands may not punish them for excesses when they are god-inspired. p. 142. Married women as well as others may simulate possession by god Dañh-gbi, being forbidden during novitiate to enter their husbands' houses. pp. 148-149.

#### TSHI-SPEAKING PEOPLES :

Violation of mere children by men is only too common on the Gold Coast. p. 94. Family tutelary deities the special protectors of chastity of girls before puberty. Family deity appoints a spirit to walk behind each girl. At puberty its duties end. Barrenness commonly believed to be due to sexual intercourse before puberty. p. 94. An unmarried girl expected to be chaste because virginity possesses a marketable value. Were she unchaste her parents would receive little or perhaps no *head-money* for her. If groom discovers that bride has been unchaste he can repudiate her and recover *head-money* and marriage expenses. pp. 286, 282. A seducer of a virgin compelled to marry her, or, if her parents will not consent, to pay amount of *head-money*. In latter case, her marketable value having been received, any excesses on her part overlooked. p. 286.

Adulterous wife punished by beating by husband. p. 201. Paramour fined or, if unable to pay, enslaved. If a slave, his owner must pay fine. In Ashanti a chief has right to put to death an adulterous wife. This right seldom exercised except where paramour is a slave in the house. Usual for husband to allow her family to redeem her. When wife belongs to too powerful a family to admit of husband putting her to death, in an extreme case he usually cuts off her nose. pp. 282-283. Paramour may with husband's consent keep the woman, paying original *head-money* and all expenses incurred for her before and after marriage. Woman then cannot separate from her second husband before paying him this sum. If she die, her family become responsible for it. They may substitute another woman upon

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whom debt devolves. pp. 283-284. A husband suspicious of wife's fidelity obtains from priest certain mystical leaves which he mixes in water in his wife's presence. She has to dip her hand into this and then plunge it into boiling oil. If guilty, she is scalded. Accused woman may also be taken before a priest who gives her a decoction of odum wood to drink. This draught supposed to have power of bursting her belly if she be guilty. p. 201.

Wife-lending practised. Wives of chiefs frequently instigated by their husbands to intrigue with other men that husbands may profit from resulting fine or enslavement. This was a common mode of entrapping youths for the slave trade. pp. 286, 282-283.

Priests marry, but priestesses do not, for they belong to the gods they serve. But they are unrestricted in sexual intercourse. A priestess may send for any man she fancies to live with her and he does not dare refuse her. Some have as many as six in their train at once. pp. 121-122.

### YORUBA-SPEAKING PEOPLES :

"Tokens of virginity" carried to bride's parents by a relation of groom. pp. 153-154. Virginity in bride only of paramount importance when a girl has been betrothed in childhood. p. 154. Then lack of it is ground for repudiation, groom sending a few broken cowries to her mother. Her family must return bride-price and presents. More usual for a compromise to be effected. Unless betrothed or married, a girl can lead any life she choose without incurring reproach or injuring her marriage prospects. Most girls have lovers in secret. pp. 183, 184, 185.

Adultery in a wife is punishable by death or divorce; but as a rule husband beats her and recovers damages from paramour. In extreme case when the husband is a man of rank he sometimes puts both to death. p. 186.

Men sometimes lend their wives to guests and friends, more frequently their concubines. p. 182.

On feast days of Odudna, goddess of love, women abandon themselves indiscriminately to male worshippers at her temple at Ado. p. 43. At annual festival of Orisha Oko, god of fertility, priestesses abandon themselves indiscriminately to male worshippers and theoretically every man has a right to sexual intercourse with every woman he may meet abroad. Practically this applies



only to slave girls or women of lowest order and then only with their consent. p. 78.

#### THOMPSON RIVER INDIANS :

The man who cut or loosed one string of the lacing which covered a maiden's breast, cut her breech cloth or lay down beside her, had to marry her ; and she at once became his recognised wife without further ceremony. p. 324.

Constancy in woman highly valued and expected by a man of his wife. When a woman committed adultery for first time or thought to have done so, her husband cut off one braid of her hair close to her head. This made her a mark of ridicule to all the tribe and she was greatly ashamed. If she did so again, her paramour generally shot by husband, and she herself either killed or divorced. p. 326.

#### KABYLES :

Pregnancy of unmarried girl, of widow or woman seeking asylum with parents considered a family disgrace and public misfortune. Father fined and woman stoned. Tikichowt. If a man has relations with a girl in her father's house and then marries her, father fined 10 reals and an ox. iii., 77. Ait Mahmoud. A woman becoming pregnant without being married, put to death. If her relatives refuse to allow this, they are fined 50 reals. He who has intimate relation with his wife before he has solemnly conducted her to his home, pays to village a fine equal to *thâmamth*. If he enters the woman's house unauthorized by her relatives, he pays 5 reals. iii., 433. Ait Flik. If a woman becomes pregnant out of wedlock, her relatives ought to kill her. They are not subject to fine for doing so. iii., 435.

Akbil, village of Agouni-n-Tesellent. He who kills a man having relations with his wife, daughter, sister, aunt, etc., pays no fine. But among many tribes although a man may be forced either to pay fine falling upon an adulterous wife or to repudiate her, yet if he kills seducer he is subject to the *rek'ba*. Certain tribes, however, have suppressed the *rek'ba* in this case and substituted the *dia*, or composition money for it. Village council in some cases exiles seducer. In some fines him. Seubkha fine him 20 reals and he has also to pay 400 to husband. Husband may kill guilty wife, but seldom done. In important families she is re-



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turned ignominiously to her family, but as a rule husband allows her to remarry and receives *thâmamth* from her new possessor. iii., 74-75. Ait-el-Ader. Seducer pays husband whatever latter exacts. Aït Yala. Property of seducer confiscated by village council, which retains 40 reals and gives rest to injured husband. Cheurfa, etc. Seducer pays 500 reals to husband to be allowed to marry woman and leaves the country with her. iii., 89-90. Akbil, etc. For adultery in time of war, a fine of 100 reals and exile for one year, in time of peace 50 reals and exile for one year. If a man's wife commit adultery and he for revenge, commit adultery with wife of seducer, he is fined 100 reals. iii., 371.

Aït Yala. The rapist pays father value of *thâmamth* and village council a fine of 25 *douros*. In case of rape value of *thâmamth* almost always forfeit to father. Subsequent marriage generally prohibited between rapist and girl. iii., 80-90. Aït Aïssa. He is obliged to marry her, giving *thâmamth* that she is worth. iii., 405. Cheurfa, etc. He who violates or attempts to violate a woman pays 30 reals, if woman consents 5 reals. If he carries her off, he pays 30 reals to her proprietor and is fined 10 reals. iii., 333. Illiten, village of Tifilkout. He who violates a woman pays a fine of 100 reals and his house is torn down. If woman has consented, each pays 100 reals. iii. 430.

### ANCIENT ARABS :

Against those of your women who commit adultery, call witnesses four in number from among yourselves, and if these bear witness, then keep the women in houses until death release them, or God shall make for them a way. iv., 19. But whosoever of you cannot go the length of marrying marriageable women who believe, then take of what your right hands possess, of your maidens who believe ;—though God knows best about your faith. . . . Then marry them with the permission of their people and give them their hire in reason, they being chaste and not fornicating, and not receivers of paramours. . . . But when they are married, if they commit fornication, then inflict upon them half the penalty for married women, that is for whomsoever of you fears wrong; but that ye should have patience is better for you, and God is forgiving and merciful. iv., 29-30. O ye who believe ! it is not lawful for you to inherit women's estates against

their will; nor to hinder them [from marrying again], that ye may go off with part of what ye brought them, unless they commit fornication. *iv.*, 22.

#### ANCIENT HEBREWS:

Simeon and Levi, Jacob's sons, kill all the men of the city of Shechem because Shechem had violated their sister. They were not placated by his desire and offer to marry her, giving never so much dowry and gift for her. *Gen.* xxxiv. Tamar had been married successively to Judah's two sons. Judah had instructed her to live in her father's house as a widow until the third son might be of an age to marry her. While there he hears that she is pregnant and he says: Bring her forth and let her be burnt. *Gen.* xxviii.

Thou shalt not commit adultery. *Ex.* xx., 14. Also *Lev.* xviii, 20. The adulterer and the adulteress shall surely be put to death. *Lev.* xx., 10. Also *Deut.* xxii., 22.

Gilead begat Jephthah by a harlot. And Gilead's sons by his wife thrust out Jephthah, and said unto him, Thou shalt not inherit in our father's house; for thou art the son of a strange woman. *Judges* xi., 1-2. King David committed adultery with Bathsheba, Uriah's wife. But this thing displeased the Lord, and he struck the child that Bathsheba bare unto David, and it died. *2 Sam.* xi., 4, 27; xii., 15, 18.

Absalom kills his half-brother Amnon for having violated his sister Tamar. *2 Sam.* xiii., 32. If any man take a wife, . . . and hate her, and give occasions of speech against her, and bring up an evil name upon her, and say, I took this woman, and when I came to her, I found her not a maid: then shall the father of the damsel, and her mother, take and bring forth the tokens of the damsel's virginity unto the elders of the city in the gate: . . . And they shall spread the cloth before the elders of the city. And the elders of that city shall take that man and chastise him; and they shall amerce him in an hundred shekels of silver and give them unto the father of the damsel, because he hath brought up an evil name upon a virgin of Israel; and she shall be his wife; he may not put her away all his days. But if this thing be true, and the tokens of virginity be not found for the damsel: then they shall bring out the damsel to the door of her father's house, and the men of her city shall stone her with stones that she die,

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because she hath wrought folly in Israel, to play the whore in her father's house : so shalt thou put evil away from among you. Deut. xxii., 13-21. If a damsel that is a virgin be betrothed unto an husband, and a man find her in the city and lie with her; then ye shall bring them both out unto the gate of that city, and ye shall stone them with stones that they die; the damsel, because she cried not, being in the city; and the man, because he hath humbled his neighbour's wife : . . . But if a man find a betrothed damsel in the field, . . . the man only shall die, . . . the betrothed damsel cried, but there was none to save her. . . . If the virgin be not betrothed, then the man shall give unto her father 50 shekels of silver, and she shall be his wife; because he hath humbled her, and he may not put her away all his days. *Ib.* xxii., 23-29. If the maiden is a bondmaid, betrothed to an husband, and not at all redeemed, nor freedom given her, she shall be scourged; they shall not be put to death, because she was not free. Lev. xix., 20. If a man entice a maiden that is not betrothed, . . . he shall surely endow her to be his wife. If her father utterly refuse to give her unto him, he shall pay money according to the dowry of virgins. Ex. xxii., 16-17. If the daughter of a priest profane herself by playing the whore, she profaneth her father; he shall be burnt with fire. Lev. xxi., 9. When Judah saw his daughter-in-law Tamar sitting by the wayside wearing a veil he thought her to be a harlot; because she had covered her face. He offered her a kid from the flock for entertaining him. Gen. xxxviii., 14-21. See Deut. xxiii., 17-18 Samson visits a harlot of the Gazites. Judges xvi., 1.

### BABYLONIANS :

If the wife of a man be taken in lying with another man, they shall bind them and throw them into the water. If the husband would save her, or if the king would save his male servant (he may). § 129. If a man accuse his wife and she has not been taken in lying with another man, she shall take an oath in the name of god and she shall return to her house. § 131. If the finger have been pointed at the wife of a man because of another man, and she have not been taken in lying with another man, for her husband's sake she shall throw herself into the river. § 132.

If a man force the (betrothed) wife of another who has not known a male and is living in her father's house, and he lie in her

bosom and they take him, that man shall be put to death and that woman shall go free. § 130.

#### ANCIENT HINDUS :

Defiling a damsel is a minor offense causing loss of caste. xi., 62, 67. If any man through insolence forcibly contaminates a maiden, two of his fingers shall be instantly cut off and he shall pay a fine of 600 panas. A Brâhmana violating an unwilling, guarded Brâhmani shall be fined 1000 panas. viii., 367, 378. A man of equal caste defiling a willing maiden shall be fined 200 panas to deter him from a repetition of the offense. In case of a Brâhmana and a willing Brâhmani, he shall be fined 500 panas. viii., 368, 378. He who gives a damsel in marriage, having openly declared her *blemishes*—insanity, leprosy, *loss of virginity*,—is not liable to punishment. viii., 205. Otherwise he shall be fined 96 panas by the king. The bridegroom may repudiate the bride if not forewarned of her blemishes. ix., 72–73. The nuptial texts are applied solely to virgins, for females who have lost their virginity are excluded from religious ceremonies. viii., 226–227.

Adultery is a minor offense causing loss of caste. xi., 60, 67. In this world there is nothing so detrimental to long life as criminal conversation with another man's wife. iv., 134. An adulterer will have swellings of his limbs. xi., 52. For adultery with the wife of a guru (Veda teacher) and failure to perform the prescribed penance, a man shall be branded on the forehead with the mark of a female part by the king and cast off by his relatives. ix., 237, 239. The violator of a guru's bed enters a hundred times the forms of grasses, shrubs, and creepers, likewise of carnivorous animals and of beasts with fangs and those doing cruel deeds. xii., 58, 60. Men who commit adultery with the wives of others, the king shall cause to be marked by punishments which cause terror, and afterwards banish. For adultery causes a mixture of castes. A man who is not a Brâhmana ought to suffer death for adultery; for the wives of all the four castes even must always be carefully guarded. Adulterous acts are addressing another man's wife at a *Tirtha*, outside the village, in the forest, or at the confluence of rivers, offering her presents, touching her ornaments and dress. A man formerly accused of adultery, who secretly convenes with another's wife, shall pay the minimum fine. No man shall converse with the wives of others after he has been forbidden to do so, on pen-



alty of a fine of one *suvarna*. This rule does not apply to the wives of actors and singers, nor of those who live on the intrigues of their own wives. viii., 352-362. "Let mutual fidelity continue unto death," this is the epitome of the highest law for husband and wife. ix., 101. Also 102-103. He in whose house a paramour of his wife resides, the son of an adulteress, the son of a widow, the son of a remarried woman, he who eats food given by the son of an adulteress, must be avoided. iii., 155-156, 158, 161. An adulterous wife throws her guilt on her negligent husband. viii., 317. For killing adulterous women of the four castes, a Brâhmana must give, to purify himself, to a Brâhmana, respectively, a leathern bag, a bow, a goat, or a sheep. xi., 139. An exceedingly corrupt wife let her husband confine to one apartment and compel her to perform the penance which is prescribed for males in cases of adultery. xi., 177-178. She who cohabits with a man of higher caste, forsaking her own husband who belongs to a lower one will become contemptible in this world. v., 163.

Libations of water shall not be offered to women who through lust live with many men. v., 90. A Brâhmana may not accept presents from those who subsist by the gain of prostitutes. Food accepted from harlots excludes him from the higher worlds. iv., 84, 219. Clever harlots are among those to be punished by the king. ix., 259.

## ANCIENT ROMANS :

For seduction, without violence, of a virgin or widow of good morals, a penalty on persons of honourable condition of confiscation of half their property ; for persons of low estate, corporal punishment and banishment to a fixed place ; for the violation of a married woman, death. *J.* iv., *xviii.*, § 3. A respectable woman who has been persistently followed, or against whom rape has been attempted, may bring either a criminal or civil action for outrage in her own name. Her father and husband who are held also to have suffered outrage may also sue in their own right. *J.* iv., *iv.*, § 2, § 10.

## FRENCH :

308 (2). A wife against whom a separation from bed and board has been decreed on account of adultery shall be sentenced by the same judgment and upon the requisition of the Public Prose-



cutor to imprisonment in a House of Correction during a stated time, which shall not be less than three months and shall not exceed two years. 229, 230. Husband or wife (1884) may sue for a divorce on account of adultery.

314. A child born before the one hundred and eightieth day since the marriage cannot be disowned by the husband in the following cases : 1. If he had knowledge of the pregnancy before the marriage ; 2. If he was present when the certificate of birth was drawn up, and if such certificate is signed by him or contains his declaration that he does not know how to sign ; 3. If it is declared that the child cannot live. 331. Children born out of wedlock, other than those born of incestuous or adulterous intercourse, can be legitimated by the subsequent marriage of their father and mother when the latter have lawfully acknowledged them before the marriage, or when they acknowledge them in the certificate of celebration.

#### PEOPLE OF UNITED STATES

Concealment of previous unchastity does not invalidate a marriage. Concealment of pregnancy by another man at the time of marriage may do so. § 23.

In divorce for adultery American policy treats both sexes alike. § 220 b. Husband who kills wife or paramour in *flagrante delicto* guilty only of manslaughter. § 45, N. 5.

## LECTURE VII

### THE FORM AND DURATION OF MARRIAGE

**M**ARRIAGE may exist between one male and one female (monogamy), between one male and two or more females (polygyny), between one female and two or more males (polyandry)—each husband may also have more than one wife,—and between a group of males and a group of females (group-marriage). Forms of Marriage

Among the lower animals sexual intercourse, whether lasting or not until the birth of offspring, is usually between one male and one female; but, as we have seen, among many mammals and some birds polygyny is found. Polyandry is very rare. Very little is known in detail about the matrimonial habits of animals lower than man. We shall therefore turn at once to the forms of human marriage. Among animals

In group-marriage the men are or are considered kinsmen, and the women kinswomen. (Where the common wives are not akin, the marriage is usually referred to as a polygynous type of polyandry.) Group-marriage is, as a rule, combined with individual marriage—*i. e.*, intercourse between one woman and one man may be usual, and intercourse with the other group-husbands or wives only occasional. Group-marriage

In both polygyny and polyandry there may be a subordination among the wives or husbands to a Combined with individual marriage

Subordination in polygyny and polyandry

Concubinage

Concubinage in  
legal sense

Causes

Determination of  
rank of wives or  
concubines

Superseding of  
superior wife

Kinswomen or  
slaves as supple-  
mentary wives

superior wife or husband. In this event the system is frequently known as female or male concubinage. Where this distinction is made in polygyny, the position of the so-called concubine is always inferior to that of the wife. In this sense, in the monogamous system of modern civilisation, cohabitation without marriage ceremonial is also called concubinage. Economic, political, or age inequalities or disabilities may, in a monogamous system, lead to concubinage taken in this sense. This non-legal relation is, however, from our point of view, a marriage relation. We shall also use the term wife, instead of concubine, in referring to all the women in a polygynous marriage. Rank among the wives is variously determined. The superior wife is commonly the first or the eldest wife; less commonly, the lastly-acquired wife. She may also be the one, as we have seen, for whom a bride-price has been paid in distinction to the wives who have been otherwise acquired. She may be of equal rank with her husband, whereas the other wives are of inferior rank. The fact of having borne children also affects the rank of wives.<sup>1</sup> The first place may be accorded the wife who has first borne a child. Again, the husband's will may alone determine the rank of his wives. More commonly, however, his preference interferes with a customary subordination. In some cases, if the superior wife fail in the proper performance of her duties, she may be superseded by an inferior wife. Sometimes a woman's younger sisters or female cousins accompany her as supplementary wives. Sometimes she owns female slaves whom she herself presents to her

<sup>1</sup> See p. 229.

husband. The number of wives may be restricted or unrestricted. In the former case, the number may vary for different classes in the same community. The taking of a second wife may require the consent of the first, or it may be allowed only when the first wife is barren, or has borne daughters only, or has misbehaved, or is diseased.

Number of wives  
restricted according  
to different classes

Toleration of  
bigyny under  
special conditions

Each wife may or may not have her own dwelling or, in case of a common dwelling, her own fireplace. The wives may even live in different villages, or, among insular peoples, on different islands. Their common husband may, where they live separate, live with each in turn, or he may live with the head-wife and merely visit the others as his business or fancy take him to the places where they live.<sup>1</sup>

In Nair<sup>2</sup> polyandry, the wife lives with her mother and male kinsfolk, and is visited in turn by her husbands. In Thibetan polyandry, the husbands are brothers. The wife is commonly thought of as belonging to the eldest brother. She is loaned by him to the others, who live with him. This is properly a form of male concubinage. Sometimes a younger brother will act as a supplementary husband in the absence of the husband proper, his elder brother. The covenant of brotherhood sometimes leads to practical polyandry as a developed form of sexual hospitality. Through the practice of child-marriage, where the husband is a child and the wife an adult, her father-in-law may live with her until his minor son is grown. Properly speaking, this is probably not a polyandrous arrangement; it is rather an

Forms of polyandry;  
Nair

Thibetan

Sexual hospitality  
of fictitious  
brotherhood

Father-son  
polyandry

<sup>1</sup> See p. 223, for fuller discussion of relation of wives in polygyny.

<sup>2</sup> Named from the caste of that name living on the Malabar coast of India.

unstable form of monogamy, as father and son are probably not the husbands of the same woman at the same time. Accounts are uncertain on this point.

Co-existence of  
different forms of  
marriage

It should be noted that, as in the case of a limitation of polygyny, more than one form of marriage may exist in the same community at the same time. Polygyny, for example, may be a prerogative only of the chiefs or rich men of a group.

Causes of polygamy

Numerical disproportion between the sexes, due to female infanticide, religious celibacy, constant warfare, an excess of male births, special economic conditions—*e. g.*, absence of men on hunting or trade expeditions, etc., is a factor in polygamy. Customs of conjugal abstinence at stated periods and desire for children are also factors. Economic inequality is, however, the chief factor of polygamy. In the many communities where a chattel character attaches to women, inequality in possessions means inequality in the number of wives, wives being classed among the most valuable forms of private property. Plurality of wives may also indicate social importance in communities where other forms of economic inequality are not especially marked. In polygynous communities, therefore, there is a tendency for the poorer people—*i. e.*, the great majority of the people—to be monogamous. Poverty and a high *market price* for wives may also lead to polyandry.

Primacy of  
economic inequality

Termination of  
marriage

Marriage terminates through death or separation. In some communities marriage is thought of as continuing after death, and widows are expected to accompany their husbands to the world of spirits. In other cases, widows are not allowed to remarry. Again, their families or second husbands may be obliged to

Widow-immolation



give the original bride-price or a stated amount of property or fine (*reipus*) to the heirs of the deceased husband at their remarriage. A period of mourning is prescribed for widows in almost all communities, and during this period remarriage is forbidden or condemned. A mourning period for widowers, during which remarriage is disapproved, is a more infrequent practice.

Widow-mourning

Duration of marriage in the lifetime of the married persons seems, to a great extent, to be dependent upon its form. Where monogamy prevails, it is often accompanied by forms of promiscuity or by readily obtained divorce. Polygamy satisfies, to a certain extent, the desire for variety to which transiency of sexual relationship is often due. In this connection Sir John Lubbock makes an enlightening distinction between *lax* and *brittle* marriage. Where an enduring form of marriage is prescribed, marriage tends to be *lax*—*i. e.*, polygamous or accompanied by promiscuity; where separation is more or less optional, it tends to be *brittle*.

The relation between the form and the duration of marriage

Incidentally, let us note here, in illustration of the brittle marriage, so-called *time-* and *trial-*marriages.<sup>1</sup> In time-marriages, a contract for marriage for a stated time is made. The time may be for a fixed number of days during the week (*part-time* marriage<sup>2</sup>),—this is a *lax* rather than a *brittle* arrangement,—or for a stated continuous period. (Term-marriage, *hand-fast-ing*.) At the end of the stated period, the relationship may or may not be made permanent. Time-marriages

Time-marriage

<sup>1</sup> We have already stated that, strictly speaking, such so-called marriages are, in our sense of the word, not marriages at all.

<sup>2</sup> Particularly associated with the Hassinyeh Arabs.

## Trial-marriage

are often due to the fact that the husband is in a given locality of trade or war only during a limited period. *Trial-marriage* is a variety of time-marriage, it being distinctly agreed that the relationship may be dissolved by either man or woman at any time. (Sometimes restricted to any time *prior* to the birth of offspring.)

## Duration of marriage

## Regulation of divorce

Divorce may occur at the pleasure of either husband or wife ; it may be allowed only by mutual consent, it may not be allowed at all, or it may be allowed only for certain specified causes. When, in the last case, the husband divorces his wife in the absence of a proper cause, he has commonly to forfeit a prescribed amount of property or to contribute towards his wife's support (alimony). The property forfeited may be the wife's dower or dowery. The absconding wife may also have to forfeit property, or may cause her family to forfeit her bride-price or an equivalent amount of property. She may also be forcibly returned to her husband, or in terms of modern law an action for the restitution of conjugal rights may be brought against her. Penalties, fines, etc., may be incurred by persons harbouring her.

## Grounds for divorce

Grounds for divorce differ in different communities according to the prevailing ideas about the fitting nature of conjugal relations. Adultery, barrenness, impotence, cruelty, disease, possession by evil spirits, prolonged absence, failure to support, laziness, quarrelsomeness, are the most general grounds of divorce. In connection with our definition of marriage, the fact is particularly interesting that barrenness is an almost universal cause for divorce. Again, divorce, after the birth of offspring, may be absolutely prohibited. In

a few cases, on the other hand, a wife has the right to leave her husband after she has borne him a certain number of children. Adultery on the part of the wife is also an almost universal cause for divorce. Rarely except under developed monogamy, however, is adultery on the part of the husband a cause for divorce. In fact, it should be noted that the right in general of separation and the ease in obtaining a separation are rarely fully reciprocal. It is shared in equally by the wife only in very primitive or in highly advanced communities, where the idea of marital proprietorship has either not arisen or has disappeared.

Right to divorce not reciprocal

Divorce is sometimes formless and sometimes preceded by requisite ceremonial. In the latter case notice may have to be served by the one divorcing upon the one to be divorced in a prescribed way. Again the consent of relatives, of group elders or council, of court, legislative body or over-lord may have to be obtained or the matter have to be *pro forma* adjudicated before such administrators or administrative or juridical bodies. When marriage takes on a religious character, the consent of religious agents is also, as a rule, required or desired.

Divorced persons may or may not (limited divorce, divorce *a mensa et thoro*, legal or judicial separation) be allowed to legally remarry. Permission for a divorced wife to remarry sometimes depends upon the consent of the husband who divorces her. Divorced persons may be allowed to remarry at once, or they may have to wait for the lapse of a fixed time before remarrying. The reunion of divorced persons is sometimes allowed and sometimes forbidden, either under all circumstances or only in the lifetime of a

Remarriage of divorced persons

husband or wife of a marriage subsequent to the divorce in question.

Disposal of offspring  
in divorce

Divorce provisions are sometimes dependent upon the existence of offspring, *e.g.*, a husband may not be allowed to repudiate or sell a wife who has borne children. In case of divorce offspring may follow the mother, going with her to her kin or to her second husband, or they may remain with the father, being cared for by his other wives or by his kinsfolk, or they may live partly with their mother and partly with their father. Very young children go, as a rule, with their mother, sometimes returning to their father when older. Sometimes girls follow their mother, and boys their father. Sometimes, again, offspring may be divided merely on a numerical basis, father or mother, as the case may be, having the right to an odd child. While with their mother, their father may be called upon to support them. In case of older children the choice is sometimes left with them. Sometimes, again, the children are assigned to the innocent party in the divorce, husband or wife, as the case may be.

The advantages to  
offspring of  
monogamy

Although polygamy is undoubtedly more advantageous to offspring than restricted, *i. e.* very unstable, monogamy, yet it probably secures less parental care for offspring than developed or enduring monogamy. In marked forms of concubinage, moreover, there is usually subordination among offspring, the children by the inferior wife faring less well than those by the superior wife.<sup>1</sup> There are not only more opportunities for the undivided and impartial attention of both parents to offspring under developed monogamy, but the latter form of marriage is alone fitted to lead to those

<sup>1</sup> See p. 94



relations between husband and wife which enable the wife to most fully perform her function as a mother. This fact will appear very plain in a further consideration of conjugal relations. First it will be well, however, to consider certain facts of sexual choice which are not only significant for their direct influence upon offspring, but also for their indirect influence in their effect upon conjugal relations. These facts will be presented in the next lecture.

NOTE A

THE FORMS OF HUMAN MARRIAGE.

Westermarck, *The History of Human Marriage*, chap. xx.

Post, *Grundriss*, etc., i., 51-65.

Hellwald, *Die menschliche Familie*, pp. 241-256 (Polyandry).

Letourneau, *The Evolution of Marriage and of the Family*, chap. v. (Polyandry).

Wilutzky, *Vorgeschichte des Rechts*, i., 187-199.

Spencer and Gillen, *Native Tribes of Central Australia*, pp. 61, 92-111 (Group-Marriage).

FACTORS IN FORM OF MARRIAGE.

Westermarck, *The History of Human Marriage*, chap. xxi.

DURATION OF MARRIAGE.

*Ibid.*, chap. xxiii.

Howard, *A History of Matrimonial Institutions*, ii., chap. v.

Post, *Familienrechts*, pp. 249-265, 316-320.

CONCUBINAGE, SEPARATION, ETC., AMONG WORKING PEOPLE IN LONDON.

Booth, *Life and Labour*, x., 41-46.

DIVORCE IN THE UNITED STATES.

Wright, *A Report on Marriage and Divorce in the United States*, pp. 167-178 and Table v.

Howard, *A History of Matrimonial Institutions*, iii., chap. xvii.



## IN ENGLAND.

*Ibid.*, ii., chap. xi.

## IN EUROPEAN COUNTRIES.

Wright, *A Report on Marriage*, etc., Appendix.

## TREATMENT OF WIDOWS.

Géza Révész, *Das Trauerjahr der Witwe* in *Zt. f. vergleichende Rechtswissenschaft*, xv. (1902), 361-405.

## TIME-MARRIAGE.

Hellwald, *Die menschliche Familie*, chap. xxiv.

## NOTE B

## PROMISCUITY THEORY:

Hetairism, or unrestricted sexual intercourse, was the original form of sexual relations. Bachofen, *Das Mutterrecht*, Basel, 1897, pp. xviii., xix., xx., 10.

Because of male jealousy and because of the monogamous habits of the anthropoid apes, it is improbable that promiscuity was universal. Darwin, *The Descent of Man*, pp. 600-5.

Group promiscuity confined to period when sexual intercourse was seasonal. When sexual activity was no longer restricted to certain times of year, women were captured from alien groups and this practice led to individual marriage. Kulischer: *Die geschlechtliche Zuchtwahl bei den Menschen in der Urzeit*, in *Zt. f. Ethnologie*, viii., (1876), 140-157.

Tendency to promiscuity was the original sexual relationship, polyandry being the first general modification of promiscuity. McLennan, *Studies in Ancient History*, Sec. series, London and New York, 1896, pp. 50-55. Also *Studies in Ancient History*, London and New York, 1886, pp. 89-107.

Individual marriage emerged from *communal marriage* through the capture of women from other groups. Through marriage by capture wives became private property. Lubbock, *Origin of Civilisation*, pp. 66-84.

*Ib.* Kohler, *Studien über Frauengemeinschaft, Frauenraub und Frauenkauf* in *Zt. f. vergleichende Rechtswissenschaft*, v., 336.

Communal marriage was not supplanted by individual marriage through marriage by capture. Rather marriage by capture introduced communal marriage, ultimately polygyny. Kautsky, *Die Entstehung der Ehe*, etc., 197-198.

Tendency to promiscuity discussed. Hellwald, *Die menschliche Familie*, chap. viii.

Marriage based on economic motives, not on sexual impulse. Primitive marriage tends therefore to be monogamous and enduring, with husband and father, head of household. Starcke, *The Primitive Family*, pp. 254-261.

Review and criticism of the arguments in favor of promiscuity theory. Westermarck, *The History of Human Marriage*, chaps. iv., v., and vi.

Analysis of indications of original promiscuity, or at least very wide marital relations among the Australians. Spencer and Gillen. *The Native Tribes of Central Australia*, pp. 92-111.

#### GROUP-MARRIAGE:

The consanguine family, based on intermarriage of brothers and sisters own and collateral in a group, the first type of marriage and of family. Punaluan marriage, or marriage of a group of brothers to a group of sisters, the second. Morgan, *Ancient Society*, pp. 383 ff., 401-423; *Systems of Consanguinity and Affinity of the Human Family*, in *Smithsonian Contributions to Knowledge*, xvii.,<sup>2</sup> pp. 474-494, Washington, 1871.

Group-marriage or exogamous promiscuity quite distinct from endogamous or general promiscuity. Evidence of the former; the latter is purely hypothetical. Post, *Hausgenossenschaften und Gruppenehen in Ausland*, 1891, p. 842.

Totemism leads directly to group-marriage, and individual marriage arises from group-marriage. Kohler, *Zur Urgeschichte der Ehe* in *Zt. f. vergleichende Rechtswissenschaft*, xii., 250, 326.

Alleged survivals of group-marriage. Post, *Grundriss*, etc., i., 42-51.

Group-marriage is certain to originate in a group characterised by two intermarrying kinship divisions, by the belief that sexual intercourse outside of kinship is natural, and by nomadic habits. Wake, *The Nature and Origin of Group-Marriage* in *J. A. I.*, xiii., 153.

One of the primitive conditions of mankind. Howitt, *Native Tribes of South-East Australia*, p. 281.

The so-called Australian survivals of group-marriage are abnormal developments of sexual hospitality and of polyandrous and polygynous tendencies. They have never been more complete than they are now. Crawley, *The Mystic Rose*, pp. 475-483.

Australian cases of so-called group-marriage merely instances of regulated tribal license. Lang, *The Secret of the Totem*, London, New York, and Bombay, 1905, chap. iii.

## NOTE C

Give the history of concubinage, noting in particular the relations between concubinage (subordination among wives) and polygyny (equality among wives) which may serve to show whether the former precedes or follows the latter. Make a comparative study (1) of the co-existence in the same group of different forms of marriage; (2) of provision for offspring in case of divorce. Enumerate polygynous or polyandrous groups, comparing the prevailing causes of polygyny or polyandry.

## NOTE D

## VEDDAHS :

Lifelong monogamy prevails. p. 458.

## YAHGAN :

There are men who have 2, 3, or even 4 wives, but usual to have only one. H. & D., vii., 378. Jealous wives make it very disagreeable for husbands. H. & D., vii., 378-379.

Bad treatment often impels a young wife to leave her husband, even though she have children. vii., 172. Divorce with formality for incompatibility of temper. x, 335.

## CENTRAL AUSTRALIANS :

Among Arunta as soon as marriage has taken place man has an exclusive right to woman though he may of his own free will lend her to other men. p. 74. A woman may be *Piraungaru* to a number of men, and as a general rule men and women who are *Piraungaru* to one another are to be found living grouped together. p. 63. The number of a man's *Piraungaru* depend entirely upon his power and popularity; if he be *ürkū*, influential, he will have a considerable number, if he be insignificant or unpopular, then he will meet with scanty treatment. p. 63. Among

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Urabunna a group of men belonging to one moiety of tribe regarded as *Nupas* or possible husbands of a group of women belonging to other moiety. One or more women are specially allotted to one particular man, each standing in relationship of *Nupa* to the other, but no man having exclusive right to any one woman, only a preferential right. A group of men stand in relationship of *Piraungaru* to a group of women selected from amongst those to whom they are *Nupa*. p. 64.

If a woman runs away from her husband and he is unable to recover her, he and his friends make a drawing on the ground of a woman, place a piece of bark very near it to represent the spirit part, and then all the men stick into it miniature spears. Exhortations are chanted to the charm to go out and enter her body and dry up all her fat. Sooner or later her fat dries up, she dies, and her spirit appears in the sky in the form of a shooting star. pp. 549-550.

### POINT BARROW ESKIMO :

Most men have one wife, though a few of the wealthy men have two each. No case of more than two wives. p. 411. In one case the younger wife was disobedient to older wife, to whom husband was much attached. "Give me a drink of water," said the older woman. "No," said the younger. "Go," said the older, and she went. p. 412.

Marriage easily dissolved on account of incompatibility of temper or even on account of temporary disagreements. One or two cases where wives left husbands on account of ill-treatment. In one case each of the couple married again, though the husband for a long time tried his best to get his wife to come back to him. pp. 411-412. In one case a wife after receiving a beating ran away and married another man ; but her first husband followed her in a day or two and either by violence or persuasion made her come back with him. p. 412. In several cases men discarded wives who were unsatisfactory or made themselves disagreeable. One woman had a querulous temper another was a great talker. p. 412.

### BEHRING STRAIT ESKIMO :

Men able to provide frequently take two or more wives. First wife regarded as head of family, and has charge of the food.

A man may discard a wife who is a scold or unfaithful to



him or who is niggardly with food, keeping best for herself. A woman may leave a man who fails to provide necessary subsistence. p. 292.

#### CENTRAL ESKIMO :

Monogamy everywhere more frequent than polygyny, only a very few men having two or more wives. Among the Netchilirmiut polyandry stated to occur. p. 579.

Slightest pretext sufficient for a separation. p. 579.

#### WYANDOTS

First wife remains head of household. p. 63.

#### MELANESIANS :

Polygyny the rule, although a considerable number of wives is found only with elder and richer men. Florida Isl. : One wife commonly, husband saying that he can neither marry nor afford (wives here are too costly) more than one. The seven wives of a certain chief were thought a great many. Visale : The chief had 60 (here brides cost little). Saa : Ordinary men have 2, great men 8 or 10. Banks' Isls. : A well-to-do man has ordinarily 2 and many have 3. Lepers' Isl. : Men generally have 2 wives. A man who has a young wife takes an elder woman, a widow, for a second, to look after the first. Some men have 3 or 4, a great man lately had 50. p. 245. Banks' Isls. : Cases known where two widowers live with one widow. Cases occur where a man connives at wife's connection with another man, but the thing is thought discreditable. pp. 245-246.

Divorce easy and common. Effected at will of either party, although easier for a man than a woman. A man does not wish to lose bride-price, and he will try many times to get back a runaway wife before giving her up. If separation is amicable the woman's father will return the bride-price, having in view another son-in-law. After some time in wedlock, a woman has worked out the bride-price, and a pig or two on one side or the other settles all claims. p. 244.

#### EWÉ-SPEAKING PEOPLES :

Unusual, *except among chiefs*, for a man to have more than 4 or 5 wives. Excessive polygyny only in Dahomi, where a man's rank and position are estimated by the number of his wives. In royal palaces of Dahomi were immured more than 5000



royal wives. pp. 203, 204, 205. Head-wife (first wife) supervises informal arrangements of whole household. Second wife acts as her assistant. p. 204. Concubines usually slave-girls owned by wives and loaned by them to husbands. p. 205.

A wife can, with husband's consent, leave him at any time by refunding *head-money* and the amount of all expenditures he has ever incurred on her behalf. If she has been grossly neglected or ill-treated by him she can, on proving her case before the headmen, leave him without payment. p. 206.

In separation, children accompany mother, who reimburses father for their maintenance. p. 206.

## TSHI-SPEAKING PEOPLES :

A wife almost invariably gives her slave-girl to her husband as a concubine. With king's permission, his sisters may marry any man who is pre-eminently handsome, no matter how low his position; but such a husband is required to commit suicide when his wife dies or upon the death of an only male child. The women of royal blood may also, with permission, intrigue with any fine and handsome man. p. 287.

Separations occur frequently. If a husband grossly maltreats a wife, or neglects her for a considerable time for a rival, she may leave him without restitution of *head-money*. If she wishes to leave him without due cause she must receive his permission and return *head-money* and all expenses. p. 284.

## YORUBA-SPEAKING PEOPLES :

Daughters of kings or chiefs live with or marry whom they please and change their partners as often as they please. First or head-wife styled "mistress of the house" and charged with preservation of order among the women. Junior wives styled "trade-wives" or "wives of commerce," probably because they sell in the markets. pp. 182-183.

## THOMPSON RIVER INDIANS :

Polygyny flourished, very many men having from 2 to 4 wives, sometimes all sisters, and not a few having as many as 7 or 8, yet there were a large number of men who had only one wife. For a man to have several wives was indicative of wealth. p. 326.

## KABYLES :

Right of separation belongs to husband only. iii., 397. Ait

Mahmoud, village of Bou Hinnoun. If a woman is repudiated or widowed, everything given her by her husband or father remains the property of husband or his heirs, with the exception of what has been loaned her by her father before witnesses or given one or two days after she has come into her husband's house. iii., 434. Aït Douala. If a woman leave her husband for another man, her parents must make her return to her husband or restore *thâmamth* to him. Iâzzouzen Bouadda. Parents pay 150 *douros* to the deserted husband, if their fortune permits, otherwise *kharouba* pays. iii., 89-90. Cheurfa, etc. If husband and wife disagree and husband is in the right, he may repudiate wife, but he will receive only that which he gave for her, 30 reals. If wife does not wish to remain with husband, and if she is young, she will wait until she becomes of age. When wife becomes of age, husband will send to her parents to ask her to return. If three messages of this kind are in vain, he may act towards her as he thinks best. He may repudiate her or leave her *thamâouk't* until his death. If a man who has repudiated his wife three times with the formula "Thou art repudiated," takes her back with a marabout as witness, he is fined 5 reals. If without the marabout, he is fined 50 reals. iii., 328. If a wife seek refuge from husband in house of a man who is not her relative and who does not eject her at once, the man is fined 10 reals. iii., 365-366. Aït Ameur, etc. If a man marry a woman of this tribe and subsequently remove to Tunis, after three years' absence the woman may remarry and the man receives only the value of the *thâmamth*. If a man repudiates his wife and dies before she remarries, his heirs are entitled only to the value of the *thâmamth*. iii., 395. Among other tribes a wait of 4 years required but relatives of husband may prolong this period among some tribes to 7 years, among others to 10, by providing for wife. ii., 146-147. Iouadhien (confederation of Aït Sedka). He who marries a woman whom he cannot legally marry (a married woman who has left but who has not been repudiated by her husband and so cannot remarry) fined 100 reals. iii., 341. Wife of an absent man may not remarry for 6 years. If her first husband then return, the value of the *thâmamth* paid by him must be returned to him. iii., 342.

Aït Ousammer. When a husband separates from wife, in case there is a nursing child and husband refuse to leave it with

mother, he is fined 2 reals. Wife likewise fined 2 reals if she refuse to keep the child. So are relatives of wife if they refuse to receive it. iii., 384. Ait Kani. If a divorced woman has a child at the breast her husband pays her 2 reals per month. iii., p. 422. Seubka. Husband pays her 10 reals per annum for 4 years. iii., 439.

## ANCIENT ARABS :

But if ye wish to exchange one wife for another, and have given one of them a talent, then take not from it anything. iv., 24. It is no crime in you if ye divorce your women ere ye have yet touched them, or settled for them a settlement. But provide maintenance for them ; the wealthy according to his power, and the straitened in circumstances according to his power, must provide, in reason ;—a duty this upon the kind. And if ye divorce them before ye have touched them, but have already settled for them a settlement ; the half of what ye have settled, unless they remit it, or he in whose hand is the marriage tie remits it ; and that ye should remit is nearer to piety, and forget not liberality between you. Verily, God on what ye do doth look. ii., 236–237. O thou prophet ! when ye divorce women, then divorce them at their term, and calculate the term and fear God your Lord. Do not drive them out of their houses unless they have committed manifest adultery. These are God's bounds, and whoso transgresses God's bounds has wronged himself. Thou knowest not whether haply God may cause something fresh to happen after that. And when they have reached their appointed time, then retain them with kindness, or separate from them with kindness ; and bring as witnesses men of equity from among you ; and give upright testimony to God. . . . Let them dwell where ye dwell, according to your means, and do not harm them, to reduce them to straits ; and if they be heavy with child, then pay for them until they lay down their burdens ; and if they suckle (the child) for you, then give them their hire, and consult among yourselves in reason ; but if ye be in difficulties, and another shall suckle the child for him, let him who has plenty expend of his plenty ; lxx., *passim*. Divorced women must wait for themselves three courses ; and it is not lawful to them that they hide what God has created in their wombs, if they believe in God and the last day. Their husbands will do better to take

them back in that (case) if they wish for reconciliation ; for, the same is due to them as from them. . . . Divorce (may happen) twice ; then keep them in reason, or let them go with kindness. It is not lawful for you to take from them anything of what you have given them, unless both fear that they cannot keep within God's bounds. So if ye fear that ye cannot keep within God's bounds there is no crime in you both about what she ransoms herself with. These are God's bounds, do not transgress them ; and whoso transgresses God's bounds, they it is who are unjust. But if he divorce her (a third time) she shall not be lawful to him after that, until she marry another husband ; but, if he divorce her too, it is no crime in them both to come together again, if they think that they can keep within God's bounds. . . . When ye divorce women, and they have reached their prescribed term, do not prevent them from marrying their (fresh) husbands, when they have agreed with each other reasonably. That is what he is admonished with who amongst you believes in God and in the last day. That is more pure for you and cleaner. ii., 227-232. Also lxvi., footnote i. ; lviii., 1-4.

And if ye fear a breach between the two, then send a judge from his people and a judge from her people. If they wish for reconciliation, God will arrange between them. iv., 38-39.

#### ANCIENT HEBREWS :

And Lamech (the 6th generation from Adam) took unto himself 2 wives. Gen. iv., 19. Gideon had threescore and ten sons of his body begotten : for he had many wives. He had also one concubine. Judges viii., 30, 31. Elkanah had two wives. 1 Sam. i., 2. David took two wives, Abigail and Ahinoam. Saul had given Michal, his daughter and David's first wife, to Phalti. 1 Sam. xxv. 42-44. Subsequently David took four wives. 2 Sam. iii., 3-5. And still later more concubines and wives. 2 Sam. v., 13. Solomon had 700 wives, princesses, and 300 concubines. 1 Kings xi., 3. And Sarah said unto Abraham, Behold now the Lord hath restrained me from bearing : I pray thee, go in unto my maid ; it may be that I may obtain children by her. And Sarah gave Hagar her maid the Egyptian, to her husband Abraham to be his wife. When Hagar had conceived, Sarah was despised by her, and Sarah upbraided Abraham. But Abraham said, Behold thy maid is in thy hand ; do to her as it pleaseth thee. Gen. xvi., 2-6. At the



request of Sarah, Abraham sent away Hagar and her son. *Ib.* xxi., 9-14. Abraham's brother, Nahor, had a concubine, Beumah. *Ib.* xxii., 24. Abraham had concubines. *Ib.* xxv., 6. And if a man sell his daughter to be a maidservant, she shall not go out as the menservants do, *i. e.*, be free in the seventh year. If she please not her master, who hath betrothed her to himself, then shall he let her be redeemed; to sell her unto a strange nation he shall have no power, seeing he hath dealt deceitfully with her. And if he have betrothed her unto his son, he shall deal with her after the manner of daughters. If he take him another wife; her food, her raiment, and her duty of marriage, shall he not diminish. And if he do not these three unto her, then shall she go out free without money. *Ex.* xxi., 7-11.

When a man hath taken a wife, . . . and it come to pass that she find no favor in his eyes, because he hath found some uncleanness in her: then let him write her a divorcement and give it in her hand and send her out of his house. And . . . she may go and be another man's wife. And if the latter husband hate her, and write her a bill of divorcement, and give it in her hand, and send her out of his house; or if the latter husband die, which took her to be his wife; her former husband, which sent her away, may not take her again to be his wife, after that she is defiled; for that is abomination before the Lord. *Deut.* xxiv., 1-4. Many sons of the priests as well as others, had taken strange wives, "and they gave their hands that they would put away their wives." It was also proposed to put away the children born of them. *Ezra* x. For the Lord saith that he hateth putting away. *Mal.* ii., 16.

#### BABYLONIANS:

If a man take a wife and that wife give a maidservant to her husband and she bear children; if that man set his face to take a concubine, they shall not countenance him. He may not take a concubine. § 144. If the maidservant bear children and afterward would take rank with her mistress because she has borne children, her mistress may not sell her for money, but she may reduce her to bondage and count her among the maidservants § 146. If she have not borne children, her mistress may sell her for money. § 147. If a man's wife do not present him with children and he set his face to take a concubine, he may bring a



concubine into his house. She shall not rank with his wife. § 145. If a man take a wife and she become afflicted with disease, and if he set his face to take another, he may. His wife, who is afflicted with disease, he shall not put away. She shall remain in the house which he has built and he shall maintain her as long as she lives. § 148.

If she do not elect to remain, he shall make good to her the dowry which she brought from her father's house and she may go. § 149. If a man would put away his wife who has not borne him children, he shall give her money to the amount of her marriage settlement and he shall make good to her the dowry which she brought from her father's house and then he may put her away. § 138. If there were no marriage settlement, he shall give to her one mana of silver for a divorce. § 139. If a freeman, he shall give her one-third mana of silver. § 140. If a man be captured and there be maintenance in his house and his wife go out of her house, she shall protect her body and she shall not enter into another house. § 133.

Otherwise they shall call her to account and throw **her** into the water. § 133 A. If there be no maintenance in the house and she enter into another she has no blame. § 134. If she bear children; and if later her husband return, she shall return to him and the children shall go to their father. § 135. If a man desert his city and flee and afterwards his wife enter into another house; if he return and would take his wife, she shall not return to him because he hated his city and fled. § 136. If the wife of a man who is living in his house, set her face to go out and play the part of a fool, neglect her house, belittle her husband, they shall call her to account; if her husband say "I have put her away," he shall let her go. On her departure nothing shall be given to her for her divorce. If her husband say: "I have not put her away," her husband may take another woman. The first woman shall dwell in the house of her husband as a maidservant. § 141. If a woman hate her husband, and say: "Thou shalt not have me," they shall inquire into her antecedents for her defects; and if she have been a careful mistress and be without reproach and her husband have been going about and greatly belittling her, that woman has no blame. She shall receive her dowry and shall go to her father's house. § 142. If she have not been a careful mistress,

have gadded about, have neglected her house, and have belittled her husband, they shall throw her into the water. § 143. If a man set his face to put away a concubine who has borne him children or a wife who has presented him with children, he shall return to that woman her dowry and shall give to her the income of field, garden, and goods and she shall bring up her children; from the time that her children are grown up, from whatever is given to her children they shall give to her a portion corresponding to that of a son and the man of her choice may marry her. § 137. If a man be in debt and he sell his maidservant who has borne him children, the owner of the maidservant (*i. e.*, the man in debt) shall repay the money which the merchant paid (him), and he shall ransom his maidservant. § 119.

## ANCIENT HINDUS :

If twice-born men wed women of their own and of other lower castes, the seniority, honour, and habitation of such wives must be settled in the order of the castes. The wife of equal caste alone shall personally attend her husband and assist him in his daily sacred rites, *ix.*, 85-87.

If the husband went abroad for some sacred duty, the wife must wait for him 8 years; if he went to acquire learning or fame 6 years, if for pleasure, 3 years. She who shows disrespect to a husband who is addicted to some evil passion, is a drunkard, or deceased, shall be deserted for three months and deprived of her ornaments and furniture. If she show aversion toward a mad or outcast husband, a eunuch, one destitute of manly strength, or one afflicted with such diseases as punish crimes, she shall neither be cast off nor be deprived of her property. . . . For one year let a husband bear with a wife who hates him; then let him deprive her of her property and cease to cohabit with her. She who drinks spirituous liquor, is of bad conduct, rebellious, diseased, mischievous, or wasteful, may at any time be superseded by another wife. A barren wife may be superseded in the eighth year; she whose children all die, in the tenth; she who bears only daughters, in the eleventh; but she who is quarrelsome, without delay. But a sick wife who is kind to her husband and virtuous in her conduct may be superseded only with her own consent and must never be disgraced. A wife, who being superseded, in anger departs from her husband's house, must

either be instantly confined or cast off in the presence of the family. ix., 76-84.

At the feast of the manes only remnants shall be the share of those who unjustly forsook noble wives. iii., 245. A woman must not seek to separate herself from her father, husband, or sons, by leaving them, she would make both her own and her husband's family contemptible. v., 149.

Neither by sale nor repudiation is a wife released from her husband, *i. e.*, if sold or repudiated she may never become the legitimate wife of another. ix., 46 and footnote.

#### ANCIENT CHINESE :

The Son of Heaven has his queen, his helpmates, his women of family, his ladies of honour. These constituted his wife and concubines. xxvii., 109. A niece and younger sister accompanied the bride to the harem. xxvii., 100-101. Until a concubine had completed her fiftieth year it was the rule that she should be with her husband once in five days. Even a favourite concubine was required in dress and diet to come after her superior. If the wife were not with the husband, a concubine waiting on him would not venture to remain the whole night. xxvii., 471. Even after the wife of a ruler was dead, the concubine wore mourning for her relatives. If one of them took her place and acted as mistress of the establishment she did not wear mourning for the relatives. xxvii., 138-139.

The concubine followed the wife out of the harem if the latter came to be divorced. xxviii., 44. When a feudal lord sent his wife away, she proceeded on her journey to her own state, and was received there with the observances due to a lord's wife. . . Her attendants set forth the various articles sent with her at her marriage, and those on the other side received them. xxviii., 170-171.

#### ANCIENT ROMANS :

The same woman cannot at the same time have two husbands, nor can the same man have two wives. *J.* i., § 63. Marriage is the union of a man and a woman entraining the obligation to live in inseparable communion. *J.* i., § 3.

#### FRENCH :

147. No one can contract a second marriage before the dissolution of the first.

231, 232. A husband and wife may reciprocally sue for a divorce on account of violence, cruelty, or gross insults, on the part of the one against the other, or in case of a sentence imposing degrading corporal punishment. 296. A divorced wife shall not be able to remarry before ten months after the divorce has become final. 297 (x). In case of divorce by mutual consent neither husband nor wife shall be able to remarry until 3 years after such divorce has been decreed. 298. In case of a divorce granted by the court on account of adultery, the guilty party shall never be able to marry his or her accomplice. 301. If husband and wife have not stipulated any advantage in favour of each other, or if those stipulated do not appear to be sufficient to secure the maintenance of the husband or wife who has obtained the divorce, the Tribunal may grant alimony to such husband or wife, which shall not exceed one-third of the income of the other. Such alimony can be stopped in case it should cease to be necessary.

267. The provisional custody of the children shall belong to the husband, whether plaintiff or defendant in a divorce suit, unless the Tribunal makes a different order at the request either of the mother or of the family or of the Public Prosecutor, for the greater advantage of the children. 302. The children shall be confided to the husband or wife who has obtained the divorce, unless the Tribunal, at the request of the family or of the Public Prosecutor, should order, for the greater advantage of the children, that all or some of them should be placed under the care of the other or of a third party. 303. In divorce whoever may be the person to whom the children shall be confided, the father and mother shall respectively retain the right to watch over their maintenance and education, and they shall be bound to contribute thereto in proportion to their means. 304. Divorce shall not deprive offspring of any of the advantages which were secured to them by law or by the matrimonial agreements of their father and mother. 305 (y). In case of divorce by mutual consent, the ownership of one-half of the property of the husband and wife shall belong by right, from the day of their first declaration, to the children born of the marriage; the father and mother shall, nevertheless, retain the enjoyment of this half until their children become of age, on condition of providing for their support,



maintenance, and education, in accordance with their fortune and standing.

PEOPLE OF THE UNITED STATES :

Polygamy (legal) is an indictable offence. § 21.

Adultery, cruelty, and desertion are the three general causes of divorce. § 220 b. There is both judicial separation (*a mensa et thoro*) and absolute divorce (*a vinculo*). Divorce *nisi* is the suspension of the decree of absolute divorce for a certain period. Suit for restitution of conjugal rights has never had a foothold. § 220 a. Transfers of property actually executed prior to divorce remain unaffected ; but rights dependent on marriage, courtesy, dower, rights of administration, etc., are annihilated by the decree. § 221. These rights are unaffected by divorce *a mensa et thoro* and *nisi*, but in such cases the wife's property will be protected by the court. § 222.

The child's custody may be given by the divorce court to either parent or to a third person. § 249. Bastards may be legitimated by subsequent marriage or in some States by a public act of paternal recognition or adoption aside from marriage. § 277. In some States the father of a bastard may at the instance of the mother be coerced by arrest and imprisonment into furnishing maintenance for the child. § 279. The tendency is to regard wills in favour of bastards with the same, or nearly the same, consideration as all others. § 281. In general, a bastard can not inherit from the putative father. § 277, N. 3.



## LECTURE VIII

### SEXUAL CHOICE

WHETHER or not sexual choice has been as important a factor in evolution as has sometimes been claimed,<sup>1</sup> its importance as a social factor is great—greater, probably, than we as yet surmise; for from this point of view the subject has never been adequately examined. At present we shall merely review some of the data useful in such a study.

Importance of sexual choice

Among mankind, as among the lower animals, incidents of courtship commonly indicate the nature of the traits which are prized in mating. The accepted suitor is frequently he who excels in purposive tests of strength, speed, cunning, etc., or he whose presents are the richest or whose display of wealth or social distinction is the most alluring. Betrothal and marriage ceremonial may be similarly suggestive of preferred conjugal characteristics. In this connection regulations of the bride-price based on the rank of the groom's father, on the bride's previous condition of maidenhood, widowhood, etc., on her personal traits, appearance, strength, etc., are significant. Widows, for example, in view of their acquired skill in domestic work, sometimes bring a higher price than virgins. Virgins, on the other hand, may, where chastity has

Significance of courtship

Of betrothal and marriage ceremonial

Of the bride-price under special circumstances

<sup>1</sup> For Darwin's theory of sexual selection and criticisms of it see Note B.

a distinctly marketable value,<sup>1</sup> sell for more than widows.<sup>2</sup>

Enduring nature of  
struggle of sexual  
selection

We should note that the struggle that goes on between members of the same sex for desirable mates is not limited to the first period of courtship. It continues throughout the mating period of life, although it is to a considerable extent conditioned by social usage in regard to the form and duration of sexual intercourse<sup>3</sup> as well as by a number of other restrictions upon sexual choice which we shall soon consider. A man may have to fight to keep as well as to get his wife. She may be captured or through magic *charmed away* from him or she may voluntarily leave him for another. A wife may on her side have to contend with other women both in and out of wedlock for her husband's favour. He may cast her off or merely neglect her.

Among human beings the play of sexual choice<sup>4</sup> is

<sup>1</sup> See p. 194.

<sup>2</sup> Note that the struggle of sexual selection may be, so to speak, unconscious and impersonal, as well as conscious and personal. The rivals may never meet or know of one another. The greater part of romantic literature expresses some form or other of this struggle. There is a special opportunity here for an analysis of some of the great novels, *Anna Karenina*, *War and Peace*, *Tess of the d'Urbervilles*, *Tom Jones*, *The Ordeal of Richard Feverel*, *Henry Esmond*, *Madame Bovary*, etc.

<sup>3</sup> This subject we have already considered in the two preceding lectures. Let us note, in addition, that both under polygyny and polyandry there are usually rules in regard to the proportioning of conjugal intercourse between the wives or the husbands, as the case may be. Even under monogamy the amount of sexual intercourse may be customarily stipulated. It is unfortunate that there has been so little observation of jealousy, particularly of female jealousy, on the part of ethnographers. What observations we have are scattered and indirect—*e. g.*, the fact of infanticide under jealousy-arousing circumstances. See p. 46. Here, as in other matters, ethnography would profit through the work of women students.

<sup>4</sup> The student should not be bewildered by this term into bondage to any *free-will* obsession. Sexual, like other kinds of choice, is always the outcome of given causes. The restrictions or limitations on sexual choice which

limited at all times by a great number of impersonal social or quasi-social checks. Even among the lower animals sexual choice is limited to choice within the same variety of species and to particular groups within the species, according to specific distribution. It is unnecessary to do more than refer to the prejudice that obtains in all communities against sexual intercourse between human and non-human beings (one form of so-called sodomy) as a proof that similar restrictions likewise exist in the human species. Although there are probably no pure races in existence, nevertheless abundant evidence of aversion, as well as of indifference, to racial intermixture does exist. Added to these restrictions upon sexual choice are a great number of restrictions based (1) upon ideas of consanguinity and affinity; (2) upon locality; (3) upon separation of the sexes; (4) upon economic, cultural, and political differences; (5) upon parental ownership; (6) upon group or class control; and (7) upon the age of the bride or groom.

Checks upon social  
choice

(1) There is probably no human society in which sexual choice is not more or less restricted by consanguineous relations. Sometimes these restrictions are endogamous, requiring marriage within the kin, sometimes they are exogamous, prohibitive of marriage within the kin. As we shall see later, the notion of kinship is very different among different communities. The restrictions correspond to, but are never quite identical with, these notions of kinship.

Consanguinity

Correspondence  
between consan-  
guineous marriage  
restrictions and  
kinship

There is almost always, for example, an aversion to

we are to consider at present are merely of a more general character, affecting every member of a particular group or groups, than many of the factors that enter into the choice of the individual.

marriage in the ascending or descending line, and yet in the matronymic or patronymic group father or mother, as the case may be, may not be reckoned of the same kin as the child. Again, in the endogamous group, brother-sister marriage is, as a rule, not customary. Endogamous or exogamous restrictions upon maternal or paternal uncle-niece or aunt-nephew or cousin-marriage may exist irrespective of other endogamous or exogamous rules. Under ethnic organisation, endogamous and exogamous rules commonly co-exist in the same group or federation of groups. Similar although less formal restrictions exist in civil society. Marriage, as we have seen, may be forbidden both within an inner circle and without an outer circle of consanguinity. The clan, or phratry, to give another widespread example, may be exogamous and the tribe endogamous.<sup>1</sup> *Cross-cousin* marriage, or marriage between cousins belonging to different totem clans or phratries may be required, whereas marriage between cousins belonging to the same totem clans or phratries may be forbidden. Adoption, fosterage, milk-brotherhood, sponsorship, and affinity (connection through marriage) are frequently assimilated to blood-relationship so that the relations to which they give rise are prohibitive marriage relations. Not uncommonly sons and brothers inherit the wives of their deceased relatives. Where, in another stage of conjugal relationship, widows inherit property they may be married by the relatives of their deceased husband to keep the property within the kinship group. In Thibetan or brother-polyandry and in North-American or sister-polygyny, sexual choice is, of course,

Co-existence of  
endogamous and  
exogamous rules

Relations assimilated to blood-  
relations

Affinity

<sup>1</sup> See pp. 169-70, 281 for fuller discussion of this intricate subject.



partly restricted by affinity. Analogous restrictions are seen in the *levirate*<sup>1</sup> or *niyoga*<sup>2</sup> and in the substitution of a female relative for a barren or deceased wife.<sup>3</sup>

Consanguineous restrictions upon marriage commonly hold as well for temporary sexual intercourse. Exceptions sometimes occur on the occasion of initiation or marriage ceremonial. This whole subject, however, needs fuller investigation.

Analogous  
restrictions upon  
temporary sexual  
intercourse

Violation of consanguineous marriage restrictions or incest is almost universally severely punished by the kinship group. The punishments are exile, destruction of personal property, death. It is notable that group condemnation of incest is always more marked than that of adultery. Disease, misfortunes of various kinds, and death through supernatural agencies are also generally believed to follow from incest.

Punishment for  
incest

Frequently endogamous rules requiring, for example, cousin or uncle-niece marriage are the direct outcome of economic motives. Property is thereby, as in the case of marriage by relatives of widow-heiresses, kept in the kinship group. The arrangement may also be analogous to marriage by barter where, for example, the first daughter is promised before birth to a younger brother or to the son of a brother or sister. Sometimes persons who are pledged by birth in this way to one another in marriage may even free themselves from the obligation by pledging their unborn offspring in their stead.

Endogamous rules  
and economic  
motives

(2) In communities where social relations in general tend to be based less and less upon common blood, marriage restrictions of blood-kinship begin to diminish.

Effect of disintegration  
of blood-ties  
upon consanguine-  
ous marriage  
restrictions

<sup>1</sup> See p. 250.

<sup>2</sup> *Ibid.*

<sup>3</sup> See p. 194.



District endogamy  
or exogamy

Serfdom restric-  
tions

Restrictions result-  
ing from general  
lack of mobility

Sexual segregation

Differentiation of  
occupations

Initiative in court-  
ship taken by male

Class or caste  
restrictions

Restrictions vary  
with class

In the passing of the blood-tie into a territorial tie, for example, district endogamy or exogamy, may be assimilated to kinship endogamy or exogamy, the inhabitants of the same locality being reputed and actually being in large part akin. For example, marriage within the clan, if the clan is scattered, may be allowed where marriage within the tribe, if the tribe is a local unit, is forbidden. District endogamy may also combine with economic class endogamy as in serfdom. Lack of freedom in general to move from one place to another—a condition which to a greater or less extent applies to the members of all communities—is, of course, a check upon sexual choice.

(3) The segregation or separation of the sexes, which also to a greater or less extent characterises all communities, is an analogous check. At puberty or, in many cases, before this period, boys and girls are commonly separated. They not infrequently sleep and eat in different places. Their occupations are differentiated. As we have already noted, both before and after marriage a greater or less degree of avoidance of one sex by the other may be practised. The seclusion in general of women may be particularly marked. Pertinent in this connection is the fact that the custom of one sex almost always the male, taking the initiative in courtship is also a check on sexual choice.

(4) In communities where economic, cultural (religious and intellectual), and political classes or castes are differentiated, marriage between members of different classes or castes is, as a rule, forbidden or discouraged. Irrespective of classes or castes, marriage between two given families or within sets of families may be customary. Different classes in the same

community may have different marriage restrictions. Brother-sister marriage practised exclusively by royal or noble families is a case in point. Again, the priestly class is frequently precluded from marriage, less frequently from all sexual intercourse. When not forbidden to marry, priests may in a polygynous community be limited to one wife or their choice may be limited to women of a certain kind, *e.g.*, to virgins. Forms of political or military celibacy may also occur.

Brother-sister marriage

Priestly marriage

(5) An important restriction upon sexual choice we have already referred to in considering the subjects of age at betrothal and marriage and of wife purchase. We have learned that parental ownership precludes to a great extent the possibility of sexual choice on the part of girls, and to a less extent on that of youths. The bride-price, the service of an able son- or daughter-in-law, affiliation with an influential group,<sup>1</sup> are among the motives of the vicarious sexual choice of parents. Where marriage by purchase is well developed, the custom of negotiating a marriage through *marriage-brokers* is very general. These agents may or may not be kinsmen or women. A high bride-price is, as we have seen, a factor in postponing and therefore a restriction upon marriage. As it is not uncommonly thought derogatory to the woman's family to marry her off for less than the customary bride-price, female as well as male celibacy, may even result from an inelastic, so to speak, bride-price. The custom of female infanticide has even been alleged by those practising it to be due to the fear of not obtaining an honourable bride-price for the maiden.

Parental ownership

Motives of vicarious choice by parents

Marriage-brokers

<sup>1</sup> See p. 161 for the social importance of *connubium* between groups.

Parental rights  
inherited, shared  
or usurped

(6) The parents' right of choice may be inherited, or may be shared by other male kinsmen. Under group-rule by elders, village community, feudal or monarchical systems, this right may be shared or wholly usurped by the group-elders, village council, chief overlord or king.

Legal age of  
consent

The requiring of an arbitrary age at marriage, the forbidding of marriage prior to initiation, and the requiring of marriage prior to a given age may also be considered restrictions upon sexual choice. The requirement of some arbitrary correspondence between the ages of the bride and groom is another restriction. Marriage within the same generation may, where *age-classes* are well defined, for example, be required. In some communities the custom also exists of preventing younger brothers or sisters marrying before elder. Child-betrothal or marriage and the marriage of adults to children may also of course be accounted age restrictions. Again, age may combine with economic restrictions where, for example, only the older men can afford young wives and, through their monopoly, force the young men into celibacy or marriage with widows.

Necessity of  
correspondence  
between ages of  
bride and groom

Of marriage  
within the same  
generation

Marriage of elder  
before younger  
brothers or sisters

Among the natives of Australia are found so-called marriage classes, the members of one class being allowed to marry only the members of another corresponding class. These classes are not identical with the Australian totem clan, phratry, or age-class, although there seems to be some kind of correspondence between all these social divisions. The subject is very obscure and has given rise to much controversy.

Australian  
marriage classes

As was suggested at the outset, facts of sexual

choice stand in important relations to the family and to social organisation in general. As was also stated, we shall not undertake the analysis of their relations, an analysis which merits patient and thorough study; but it may be well to suggest a few standpoints from which the subject should be considered. It is plain that there is a close relation between conditions of sexual choice and the form and duration of marriage. Entire deprivation of sexual choice, for example, through one or more of the factors we have been considering, through child-betrothal or marriage, let us say, works against the duration of marriage. Sexual choice is exercised at another time, in this case, at a later age. Again in temporary forms of sexual intercourse, either there is no sexual choice on the woman's part (rape, certain forms of prostitution, sexual hospitality), or on the part of both man or woman the choice is only partial, *i. e.*, either man or woman is chosen only for momentary satisfaction. Similarly sexual choice in polygyny will probably vary from that in monogamy. In the former each wife may be chosen for a different reason, just as each wife, as we shall see later, may have a different conjugal task. In monogamy, on the other hand, a woman, in order to be chosen, may have to combine many desirable traits. It is plain, therefore, that marriage and particular forms of marriage will encourage the propagation through sexual selection of a certain set of characters, whereas temporary sexual intercourse, or other forms of marriage will encourage another set. Rules of intermarriage have a vital effect as social ties or barriers between groups. It has been pointed out, for example, that clan-exogamy has been highly influential in turning

Standpoints for investigation of influence of sexual choice in society

Sexual choice and form and duration of marriage

Effect of deprivation of sexual choice

Effect of temporary sexual intercourse upon sexual choice

Sexual choice in polygyny

In monogamy

Intermarriage a social tie



otherwise hostile into united groups. Exogamous rules, as well as lack of freedom in general, may, on the other hand, build up barriers of social intercourse between classes and between individuals. Notable in this connection, as extreme illustrations of such tendencies, are the various practices of *ceremonial avoidance* between relatives by blood or marriage. The custom of brother-sister, particularly brother-younger sister, mother-son, father-in-law-daughter-in-law, mother-in-law-son-in-law avoidance has been explained in various ways and it may be due to various causes. Nevertheless it is in many cases undoubtedly an incest regulation.

Ceremonial avoidance at times an incest regulation

## NOTE A

## COURTSHIP.

Westermarck, *The History of Human Marriage*, chap. viii.

*The Odyssey*, Books xxi.-xxii. (Testing of Penelope's suitors).

## RESTRICTIONS UPON SEXUAL CHOICE.

Westermarck, *The History of Human Marriage*, chap. xvi.

Post, *Familienrechts*, pp. 220-234.

Lasch, *Der Selbstmord aus erotischen Motiven bei den primitiven Völkern* in *Zt. f. Socialw.*, ii., 578 ff.

## AMONG NATIVES OF AUSTRALIA.

Howitt, *Native Tribes of South-East Australia*, chap. v.

## CONSANGUINEOUS RESTRICTIONS.

Post, *Familienrechts*, pp. 79-87; *Grundriss*, etc., i., 32-42.

Huth, *The Marriage of Near Kin*, London, 1875.

*Reports of the Cambridge Anthropological Expedition to Torres Straits*, Cambridge 1904, vol. v., sec. ix.

*Pahlavi Texts*, vol. xviii., in *The Sacred Books of the East*, ii., app. iii., pp. 389-430 (Persian next-of-kin marriage).

Garcilasso de la Vega, *The Royal Commentaries of the Yncas*, i., 308-310 (royal brother-sister marriage).



## CLAN EXOGAMY.

Frazer, *Totemism*, pp. 58-69.

Legal restrictions upon marriage (in legal sense) in United States. (Age, prohibited degrees, void and voidable marriage, etc., legal formality in contracting marriage, etc.)

Wright, *A Report upon Marriage and Divorce in the United States*, pp. 28-60.

## RELIGIOUS CELIBACY.

Lea, *The History of Sacerdotal Celibacy*.

## NOTE B

## SEXUAL SELECTION.

Sexual selection is a variety of natural selection. The strongest, swiftest, bravest, most sagacious, most beautiful, or in other respects most pleasing individuals will be the most successful in the struggle that is waged between members of the same sex in securing mates. They will leave the most numerous progeny, and thereby propagate their own characteristics. The selective influence of sexual choice accounts for many secondary sexual characters. Darwin, *The Descent of Man*, chap. viii., pp. 210-224.

Secondary sexual characters are the outcome merely of natural selection. Colours, for example, are developed not because they are pleasing to mates but because they are characteristic of male vigour. The most vigorous males, therefore, will propagate their colouring. Wallace, *Tropical Nature*, pp. 221-248; *Darwinism*, New York, 1889, chap. x.

Review of Darwin and Wallace. Typical beauty is the full development of visible characteristics belonging to the human organism in general; of those peculiar to the sex; of those peculiar to the race. Westermarck, *The History of Human Marriage*, chaps. xi., xii.

Sexual selection is only a directive factor in the differentiation of secondary sexual characters. These characters are the outcome of the primary sex difference, a difference in metabolism. Thompson and Geddes, *The Evolution of Sex*, London, 1901, chap. ii.

## THE ORIGIN OF EXOGAMY.

In marriage by capture due to female infanticide and consequent scarcity of females. McLennan, *Studies*, etc., pp. 75-77; also *Studies*, etc., *Sec. Ser.*, chap. vi.

Marriage by capture. Female infanticide was a result of exogamy. Among the lowest groups, male as frequent as female infanticide. Latter implies prudence and forethought unpossessed by those groups. Lubbock, *The Origin of Civilisation*, pp. 70, 72, 93.

Female infanticide is a result, not a cause of marriage by capture; for the lot of captured wives is unhappy, and knowing this their mothers kill their female infants. Again a group is unwilling to bring up girls merely to be captured by their enemies. Kautsky, *Die Entstehung der Ehe*, etc., p. 261.

Marriage by capture. Captured wives are war trophies and therefore honourable. Exogamy passed from being honourable to being required, non-possession of a foreign wife being a proof of cowardice. Spencer, *The Principles of Sociology*, New York, 1898, part iii., p. 633.

Exogamy preceded marriage by capture. The latter was a result of aversion to near marriage. Hellwald, *Die Menschliche Familie*, p. 280.

Marriage by capture is too infrequent to have given rise to exogamy. Crawley, *The Mystic Rose*, p. 370.

Due to desire to secure survival of tribe by outside alliances. Endogamy is a policy of isolation. The alternative is between marrying out and being killed out. Tylor, *On a Method*, etc., pp. 266-268.

Marriage, in itself a legal relation, was not possible between persons who as members of the same clan or family already stood in a legal relation to one another. Starcke, *The Primitive Family*, pp. 231-232.

The giving of sisters to men of other groups was an act of propitiation, they therefore came to be especially set aside for such disposition, and union with their own brethren was prohibited. Giddings, *Note on the Origin of Totemism and Exogamy in Annals of the American Academy of Political and Social Science*, xiv. (1899), p. 275.

Originally sexual intercourse could be accomplished only through force or cunning. These methods were condemned within a peace group. Consequently wives had to be conquered outside of the group. Bernhöft, *Zur geschichte des Europäischen Familienrechts* in *Zt. f. vergleichende Rechtswissenschaft*, viii., pp. 184-189.

Young males were excluded from family through jealousy of father or male head. They were readmitted on condition of respecting father's right to women of group, *i. e.*, his wives and daughter-wives. Young males were therefore forced into procuring females from outside. Their rights to these captured females were in turn respected by the father. Father-daughter marriage came to be precluded by an appreciation of the advantages of marrying off sisters to outside suitors and by female jealousy. Atkinson, *Social Origins and Primal Law*, pp. 229-238, 250-260.

Exogamy does not of course originate in the desire to add new working members to the kinsfolk group, but among the lower types of tillers of the soil exogamy is widespread because of this motive. Grosse, *Die Formen der Familie*, etc., p. 173.

#### THE ORIGIN OF AVERSION TO INCEST.

In the sentiment that evil would come of consanguineous marriage. Morgan, *Ancient Society*, New York, 1887, p. 69.

Consanguineous marriages are detrimental to the species, therefore by natural selection an instinct against them comes to be developed. This is expressed as an aversion to sexual intercourse with house-mates. Westermarck, *The History of Human Marriage*, pp. 352-353.

Early associated with the feeling that it is not decent for house-mates to marry. Smith, Robertson W., *Kinship and Marriage in Early Arabia*, p. 201.

All sexual intercourse is dangerous and especially that between those in close contact. Sexual taboo in general concentrates upon house-mates, therefore they are to be avoided in marriage. Crawley, *The Mystic Rose*, pp. 222, 443.

Marriage by capture was originally the only form of marriage. Aversion to incest was consequently the correlative to exogamy. McLennan, *Studies*, etc., *Sec. Ser.*, p. 65.

The horror of incest is the result of clan exogamy. Exogamy is one form of sexual taboo. Because of the primitive belief that the blood is the life, woman through her special sexual crises is closer to the clan totem than man. Women of the same clan as one's own are therefore dangerous and to be avoided. Durkheim, *La Prohibition de l'Inceste et ces origines* in *L'Année Sociologique*, 1896-1897.

Based on the biological need of stimulating the blood through intermixture; reinforced through the dislike of intermarrying with house-mates, and through male jealousy. Moreover, as soon as groups become larger, the satisfaction of sexual desire becomes too easy from the point of view of health. Exogamy was a means of confining sexual intercourse within hygienic limits. Then it became a means of strengthening intergroup ties. It was therefore a means of both individual and group selection. Steinmetz, *Die neueren Forschungen zur Geschichte der menschlichen Familie* in *Zt. f. Socialw.*, ii. (1899), 821.

#### CEREMONIAL AVOIDANCE.

Due to indignation prompted by marriage by capture. Lubbock, *The Origin of Civilisation*, pp. 84-85.

Sometimes an expression of respect for parents-in-law. Starcke, *The Primitive Family*, pp. 239-240.

It is causally connected with facts of residence, and it is expressive of a man's position as an "outsider" in his wife's family. Tylor, *On a Method*, etc., pp. 246-252.

Just as a man after he is *made* a man avoids physical intimacy with his own mother from sexual taboo, *ngiampe* duty (taboo on house-mates), and inequality of age, so *a fortiori* he avoids it with his mother-in-law. The mother-in-law also receives the *onus* of the sexual taboo that is broken between her daughter and son-in-law. Crawley, *The Mystic Rose*, pp. 399-414.

#### THE RELATION BETWEEN AGE-CLASSES AND INCEST REGULATION.

First incest prohibitions were based on *age-classes*. A man could not marry women of his mother's or daughter's age-class. Then marriage between brothers and sisters, and

sometimes cousins in the first degree. This soon brought up horde exogamy, in view of the small size of the horde. The totem became the sign of the exogamous consanguineous group formed through horde exogamy, and clan exogamy is the result. Cunow, *Bases économiques du matriarcat* in *Le Devenir Social*, iv., 46-51.

#### AUSTRALIAN MARRIAGE-CLASSES.

On southern coast of South Australia, part of the west coast of Western Australia, and the south-western coastal district of Victoria and New South Wales, the old men appoint young married or unmarried women *tooar* to certain boys. They are henceforward forbidden to speak or look at one another. The daughter the woman may bear she is expected to give, when old enough, to the young man to whom she is *tooar*, and if he have a sister he is expected to give her to one of the woman's sons in exchange for his own wife. Marriage classes arose from the practice of this custom by coalescing tribes. Mathews, *The Origin, Organisation, and Ceremonies of the Australian Aborigines* in *Proceedings of the American Philosophical Society*, xxxix. (1900), 560-570.

They are the outcome of clan exogamy. In the matronymic clan, part of the clan will always live on territory belonging to another clan, because wives *live* in their husbands' groups. Occupation of the same territory is assimilated to possession of the same totem. Inter-marriage therefore between the members of clans living on the same territory is forbidden and *alternating* marriage classes arise. Durkheim, *La Prohibition de l'Inceste et ses Origines* in *L'Année Sociologique* (1896-1897), pp. 11-25.

Arise in transition from matronymy to patronymy. Aversion to marriage into the maternal tribal moiety persists and necessitates a new subdivision into eight matrimonial classes. Durkheim, *Organisation Matrimoniale Australienne* in *L'Année Sociologique*, viii., 134-136.

There were two original marriage classes, based on the custom of reckoning descent and kinship through one parent only. These two classes were subdivided into parent and child grades. Wake, *The Nature and Origin of Group Marriage* in *J. A. T.*, xiii., 155.



Deliberate arrangements. The effect of the division of the tribe into two exogamous halves with all the children of the same mother ranged on the same side is to prevent the marriage of brothers with sisters; that into four exogamous quarters, coupled with the rules that every person may marry only into one quarter, and that the children must belong to a quarter which is neither that of their father nor that of their mother, is to prevent the marriage of parents with children. Frazer, *The Beginnings of Religion and Totemism* in *The Fortnightly Review*, Sept., 1905.

A deliberately imposed institution to prevent marriage between persons of parental and filial generations. Animal-named sub-phratries may have been converted into the mechanism of the classes. Lang, *The Secret of the Totem*, p. 187.

Originally non-intermarrying divisions of a horde based on three stages of seniority. Prior to totem clans and phratries. Cunow, *Der Australneger*, p. 24.

#### NOTE C

Study the struggle of sexual selection in polygyny. Make a study of suicide for love as a result of social checks on freedom of sexual choice. Make a comparative study (1) of restrictions upon sexual choice based upon affinity; (2) of punishments for incest; (3) of territorial marriage restrictions in connection with prevailing kinship systems; (4) of motives determining parental choice in marriage; (5) of age restrictions. Is there any relation between growth of demand for female chastity before marriage and clan exogamy or endogamy? Make a thorough study of ceremonial *avoidance* in connection with prevailing endogamous or exogamous marriage rules.

#### NOTE D

##### VEDDAHS:

They are endogamous. p. 485. In certain districts fifty years ago (1842) sister and daughter marriage occurred. In others the younger and not the older sister was married. p. 467.

##### YAHGAN:

Strongest and most redoubtable suitor always preferred. H. and D., vii., 378.

Marriage generally endogamous. x., 334. A few cases are known where a man has had a mother and daughter for wives; but generally there is a great horror of marriage between near relatives. vii., 182.

Very often old men have one or two young wives. Sometimes old women have young husbands, but similarity of age the most general custom. H. and D., vii., 378. Because of common habit of marrying girls to older men, it often happens that young men find only widows to marry. vii., 174.

#### CENTRAL AUSTRALIANS:

Whilst an undoubted fact that marriage by charming is actually practised, not probable that it is of very frequent occurrence, for everything depends on the acquiescence of the woman, and with the sure knowledge that if caught in act of deserting man to whom she has been assigned she will meet with very severe punishment and in all probability be put to death, while even if not caught she is almost certain to come in for rough handling during ensuing quarrel, she is not very easily charmed away from her original possessor. Still she sometimes is, and this method allows of breaking through of hard and fast rule which for the most part obtains and according to which woman belongs to man to whom she has been betrothed probably before her birth. pp. 543-544. If, through marriage by charming, a man obtains wife of another, and the latter comes armed, as he most likely will, to resent the interference, then the men who belong to group of aggressor will stand by latter and support his claims, if necessary by fighting. p. 542. Under no circumstances would a man be aided in securing a woman, by charming, of a class into which he might not lawfully marry, nor would he, even if successful in doing so, receive any assistance from his friends in event of a quarrel arising, as it certainly would, in connection with the abduction. p. 542. Occasionally, but rarely, it happens that a man attempts to prevent his wife's *Piraungaru* from having access to her, but this leads to a fight and husband is looked upon as churlish. p. 63.

The whole tribe (*Urabunna*) is divided up into two exogamous intermarrying classes (Matthurie and Kirarawa); the members of each of these again are divided into a series of totemic groups. A Matthurie man must marry a Kirarawa woman and a man of

one totem must marry a woman of another totem, certain totems being confined to each of the exogamous classes. p. 60.

Among the Arunta the totem has nothing whatever to do with regulating marriage. p. 34.

In each tribe at the particular time when a woman is being handed over to one particular man, especial individuals representing groups with which at ordinary times she may have no intercourse, have right of access to her. In majority of tribes even tribal brothers are included amongst them. It is at least very probable that this custom is regarded as pointing back to former existence of an exercise of wider marital rights than those which now obtain in the various tribes. p. 96.

Should any man break through the strict marriage laws, head men of group or groups concerned consult together with elder men, and if offender, after long consultation, be adjudged guilty and the determination be arrived at that he is to be put to death—a by no means purely hypothetical case—then the same elder men make arrangements to carry the sentence out, and a party is organised for the purpose. p. 15. Sexual jealousy not developed to anything like extent to which it would appear to be in many other savage tribes. For a man to have unlawful intercourse with any woman arouses a feeling which is due not so much to jealousy as to fact that delinquent has infringed upon a tribal custom. If the intercourse has been with a woman who belongs to the class from which his wife comes, then he is called *atna nylna* (vulva-thief); if with one with whom it is unlawful for him to have intercourse, *iturka*, the most opprobrious term in the Arunta tongue. In the one case he has merely stolen property. In the other he has offended against tribal law. p. 99.

The initiation in regard to establishing relationship of *Piraungaru* between a man and a woman must be taken by elder brother, but arrangement must receive sanction of old men of group before it can take effect. p. 63.

A man can only marry women who stand to him in relationship of *Nupa*, or else are children of his mother's elder brothers, blood or tribal, or what is the same thing, of his father's elder sisters. p. 61.

When a man lends his wife, he only does so to a member of his own group, that is to a man to whom, without having been

allotted to him, the woman stands in the relationship of *Unawa* just as she does to the man to whom she has been allotted. p. 74.

#### POINT BARROW ESKIMO :

A man desires to obtain a wife who will perform her household duties well and faithfully and will be at same time an agreeable companion, while he often plans to marry into a rich or influential family. The woman appears to desire a husband who is industrious and a good hunter. There were nevertheless indications that real love matches sometimes took place. p. 410. One case was observed where a young man's mother selected a girl and invited her to cook and perform other kitchen duties. Her conduct proving satisfactory, she was invited to become a member of the family. p. 410. In one case a man attempted by blows to coerce a girl to live with him, but he was unsuccessful. p. 413.

A man usually selects a wife about his own age, but reasons of interest sometimes lead to a great disparity of age between the two. There were several men who had married widows or divorced women old enough to be their mothers. p. 411.

#### BEHRING STRAIT ESKIMO :

Stated that anciently when a husband and a lover quarrelled about a woman they were disarmed by neighbours and then settled the trouble with their fists or by wrestling, the victor taking the woman. p. 292.

Unalit frequently marry first cousins or remote blood relatives with idea that in such a case wife is nearer to her husband. One man said that in case of famine if a man's wife was from another family she would steal the food from him to save her own life, while her husband would die of starvation, but should a woman be of his own blood she would share with him. p. 291. Brothers and sisters, step-brothers and step-sisters do not intermarry. p. 291.

#### CENTRAL ESKIMO :

Sometimes men choose their wives when grown up and sometimes a long wooing precedes marriage. p. 579.

Cousins, nephew and niece, uncle and aunt, not allowed to intermarry. p. 579



## WYANDOTS :

Marriage between members of same clan forbidden. p. 63. In polygyny wives must belong to a different clan. p. 63. Men and women must marry within the tribe. For a man or woman without the tribe to be married he or she must be adopted into some family of clan other than that to which other party belongs. p. 63.

A man seeking a wife consults her mother, sometimes direct, sometimes through his own mother. Mother of girl advises with women councillors to obtain their consent and young people usually submit quietly to their decision. Sometimes women councillors consult with the men. pp. 63-64.

## MELANESIANS :

Florida : In old time, in case of intercourse between two members of same kin division, man was killed and woman made a harlot. Now money and pigs can condone offence. Banks' Isls.: People of the other kin division would come and destroy gardens of those who belonged to that in which offence had been committed without incurring resistance or complaint. Lepers' Isl.: Man had also to make large payment to near relatives of woman. Cases of incest, intercourse between kin, were rare in all the islands, so strong and fundamental was the feeling against it. pp. 23-24. Araga, Pentecost Isl.: Marriages within kin division not unknown, but contractors despised and even abhorred, although money and pigs having been given and received, the marriage stands. p. 26.

Banks' Isls.: Mutual avoidance practised between a man and his mother-in-law. Lepers' Isl.: A man speaks to his mother-in-law, but will not approach her. New Hebrides : As soon as boy puts on clothing and goes to live at club-house, life-long avoidance of mother and sisters begins. He may go to father's house to ask for food, but if his sister is within he has to go away before he eats. If by chance he meets her in the path, she runs away and hides. Reserve between mother and son increases as boy grows up. If he asks her for food, she does not give it to him directly, but puts it down for him to take. She speaks to him in the plural, and sits at a little distance from him, turned away. p. 232. Girls were never allowed to go about alone without mother or elder friend. p. 236.



Banks' Isls.: Within the 2 kin divisions, there are certain families who endeavour to keep up by intermarriage the family connection of which they are proud. p. 25.

#### EWE-SPEAKING PEOPLES:

Clan exogamy practised. Not now always scrupulously observed by sea-board tribes. p. 207.

When a brother inherits a brother's wives more usual (never necessary) for union to be consummated than when a nephew is heir. p. 205.

A boy adopted by a priest may not marry one of priest's children. p. 144.)

#### TSHI-SPEAKING PEOPLES:

Considered very disgraceful for a girl to have intercourse with an Odonko (imported slave from interior to north of Ashanti, of exceedingly low mentality and inferior to natives). p. 289.

Marriage within the clan forbidden. (See *Yoruba-Speaking Peoples*, p.) 297. On Gold Coast marriages of half-brothers and half-sisters by different mothers permitted. p. 188

#### YORUBA-SPEAKING PEOPLES:

Marriage within known circle of consanguinity forbidden. p. 176. As a rule relationship not traced farther than second cousins. p. 188.

Affinity no bar. A man may even marry mother and daughter, but such marriages do not often occur. p. 188.

#### THOMPSON RIVER INDIANS.

Many women have married white settlers of all European nations. On other hand, hardly any mixture with Chinese and negroes, largely owing to fact that majority of Indians look with contempt upon these races. p. 179.

Cousins forbidden to marry, because of one blood, similar to sisters and brothers; and union of distant blood relations discountenanced. Even if second cousins married they were laughed at and talked about. p. 325.

A widower expected to seek another wife among sisters or relatives of deceased wife. p. 325.

The Lower Thompsons favoured marriage between members of different villages. p. 325.

Youths when at home never washed in close proximity to married people. If a youth should enter a sweat-house where a

married couple were or had been sweat-bathing together he would become a poor man. p. 321. At puberty a girl was at once separated from all other people. She was segregated in a special hut for 4 months; in ancient times, the Indians say, for a year. pp. 311-317.

Seems to have been an inclination on part of those who were wealthier, more successful, or more industrious, and some more distinguished than others to marry their children to other wealthy people. The warrior preferred to marry his child to that of another warrior equally as distinguished as himself; the hunter to marry his child to the child of another hunter or of some enterprising or industrious person rather than to the child of a fisherman. p. 325.

In most cases husband is about 5 years older than wife; but it was by no means a rare occurrence for a girl to marry a man of forty or fifty. In these cases man was almost always a widower or already married. Young men seldom married women much older than themselves except in cases where a younger brother had to take his older brother's widow. p. 322.

#### KABYLES :

Imecheddalen. *Thâmamth* of a virgin fixed at 50 reals, plus 2 sheep valued at 8 reals apiece; of a divorced woman at 70 reals to husband, and 2 sheep, from 8 to 10 reals in value, to father or brother of woman; of a widow, 30 reals and 2 sheep, at 8 reals, to her relatives. He who receives more than these sums pays over to the village council whole value of the *thâmamth* plus a fine of 20 reals. iii., 417.

Marriage with a negress not theoretically forbidden, but a man's family would oppose it, and he would be forced into exile. ii., 164. Village of Afenson, some sons killed their father for marrying a negress, and this act was publicly approved. iii., 101.

Moslem restrictions are observed. ii., 163-164. Those guilty of incest with children of such unions stoned to death. ii., 170.

Aït Ali Ou Illoul. If a man sell wife who has left him to a man of the tribe he can ask only for the value of the *thâmamth* that he originally paid for her. If he attempt to sell her to a stranger he is fined an amount equal to that which he would have received for her, bargain is void, and woman is free to marry

whomever she wish. iii., 427. Ait Kani. He who gives a woman in marriage into another tribe pays 3 reals. iii., 422.

Marriage condemned with a disreputable woman or with a woman whose relatives engaged in degrading occupations, butchers, dancers, etc. ii., 165.

Aoukdal. For adultery between Kabyles, 50 reals fine; between Kabyles and Marabouts, 100 reals. ii., 426. Cheurfa, etc. He who marries a woman to a Kabyle or who repudiates his wife to marry her to a Kabyle, fined 20 reals. iii., 328. Custom opposes marriage of a Kabyle to a professing Jew or Christian. ii., 164.

#### ANCIENT ARABS:

Ye are not able, it may be, to act equitably to your wives, even though ye covet it; do not, however, be quite partial, and leave one, as it were, in suspense. iv., 129.

And do not marry women your fathers married,—except bygoness,—for it is abominable and hateful, and an evil way; unlawful for you are your mothers, and your daughters, and your sisters, and your paternal aunts, and your maternal aunts, and your brother's daughters, and your sister's daughters, and your foster mothers, and your foster sisters, and your wives' mothers, and your step-daughters, who are your wards, born of your wives to whom ye have gone in; but if ye have not gone in unto them, then it is no crime in you; and the lawful spouses of your sons from your own loins, and that ye form a connection between two sisters,—except bygoness,—verily, God is forgiving and merciful. iv., 26-28.

Wed not with idolatrous women until they believe, for surely a believing handmaid is better than an idolatrous woman, even though she please you. And wed not to idolatrous men until they believe, for a believing slave is better than an idolater, even though he please you. ii., 220. When there come believing women, who have fled, then try them; God knows their faith. If ye know them to be believers, do not send them back to the misbelievers; they are not lawful for them, nor are the men lawful for these; but give them what they have expended, and it shall be no crime against you that ye marry them, when ye have given them their hire. And do not ye retain a right over misbelieving women; but ask for what ye have spent, and let them ask for what they have spent. That is God's judgment. ix., 10-11.

## ANCIENT HEBREWS :

Miriam and Aaron spake against Moses because of the Ethiopian woman whom he had married. Numb. xii., 1.

Neither shalt thou make marriages with them (the Hittites, Canaanites, etc.) ; thy daughter thou shalt not give unto his son, nor his daughter shalt thou take unto thy son. For they will turn away thy son from following me ; that they may serve other gods. Deut. vii., 3-4. When Samson asked for a daughter of the Philistines to wife, his father and his mother said unto him, Is there never a woman among the daughters of thy brethren, or among all my people, that thou goest to take a wife of the uncircumcised Philistines ? Judges xiv., 3. But King Solomon loved many strange women, together with the daughter of Pharaoh, women of the Moabites, Ammonites, Edomites, Zidonians, and Hittites ; of the nations concerning which the Lord said unto the children of Israel, Ye shall not go in to them, neither shall they come in unto you ; for surely they will turn away your heart after their gods. 1 Kings xi., 1-3. Judah hath dealt treacherously and an abomination is committed in Israel and in Jerusalem, for Judah hath profaned the holiness of the Lord and hath married the daughter of a strange god. Mal. ii., 11.

Abraham charged his servant to go unto his kindred and take a wife unto his son Isaac. Gen. xxiv. Esau, when he was forty years old, took to wife two Hittite women who were a grief of mind unto Isaac and Rebekah. *Ib.* xxvi., 34-35. Esau saw that the daughters of Canaan pleased not Isaac. Therefore he took to wife Mahalath the daughter of Ishmael, son of Abraham. *Ib.* xxviii., 8-9. Isaac sent Jacob to take a wife of the daughters of Laban, his mother's brother. *Ib.* xxviii., 1-2. Jochebed, mother to Aaron and Moses, married her brother's son. Ex. vi., 20. Tamar, the half-sister of Amnon by the same father, King David, besought Amnon when he was attempting to force her, saying, I pray thee, speak unto the king ; for he will not withhold me from thee. 2 Sam. xiii., 13. Marriage forbidden between half-brothers and sisters, with paternal or maternal aunt, with the wife of a paternal uncle, of a brother, with a step-daughter, or step-granddaughter, with a sister-in-law, in her sister's lifetime. Lev. xviii., 6-18. In fornication with a step-mother, daughter-in-law, both shall be put to death. If a man



take a wife and her mother, . . . they shall be burnt with fire, both he and they. For fornication with a half-sister, both shall be cut off in the sight of their people. For fornication with an uncle's wife or a brother's wife, they shall be childless. *Ib.* xx., 11-21. Saul's son upbraided Abner, the captain of the hosts, for having gone in unto his deceased father's concubine. 2 Sam iii., 7. David took his ten concubines, who had been violated by his son Absalom, and put them in ward and fed them, but went not unto them. So they were shut up unto the day of their death, living in widowhood. 2 Sam. xx., 3; xvi., 21-22.

Every daughter that possesseth an inheritance in any tribe of the children of Israel shall be wife unto one of the family of the tribe of his father, that the children of Israel may enjoy every man the inheritance of his fathers. Neither shall the inheritance remove from one tribe to another tribe. The daughters of Zeloph had therefore married their father's brother's sons. Numb. xxxvi.

Priests are forbidden to take a wife that is a whore, or profane; neither shall they take a woman put away from her husband. Lev. xxi., 7. The high priest was to marry only a virgin of his own people. *Ib.* xxi., 13-14.

#### BABYLONIANS :

If a man have known his daughter, they shall expel him from the city. § 154. If a man lie in the bosom of his mother after (the death of) his father, they shall burn both of them. § 157.

If a man, after (the death of) his father, be taken in the bosom of the chief wife (of his father) who has borne children, he shall be cut off from his father's house. § 158. If a man have betrothed a bride to his son and his son have known her, and if he (the father) afterward lie in her bosom and they take him, they shall bind that man and throw him into the water. § 155. If his son have not known her, but he himself lie in her bosom, he shall pay her one-half mana of silver and he shall make good to her whatever she brought from the house of her father and the man of her choice may take her. § 156.

#### ANCIENT HINDUS :

A twice-born man should carefully avoid marrying into a family in which no male children are born, one the members of



which have thick hair on the body, are subject to hemorrhoids, phthisis, weakness of digestion, epilepsy, white or black leprosy. He should not marry a maiden with reddish hair or a redundant member, with no hair on the body or too much, with red eyes, one who is quarrelsome or sickly. She should have an auspicious name, be free from bodily defects, have a graceful gait, a moderate quantity of hair on head and body, small teeth, and soft limbs. iii., 7-10; also ii., 33. To a distinguished, handsome suitor, of equal caste, should a father give his daughter . . . , though she have not attained the proper age. But the maiden, though marriageable, should rather stop in the father's house until death, than that he should give her to a man destitute of good qualities. ix., 88-89.

A damsel who is neither a Sapindâ (the Sapindâ relationship ceases with the seventh person in the ascending and descending lines) on the mother's side, nor belongs to the same family, *i. e.*, is not a Samanodaka (this relationship ceases when the common origin and the existence of a common family name are no longer known) on the father's side, is recommended in marriage to twice-born men. iii., 5; also v., 60. Giving a daughter to a brother is a minor offence, causing loss of caste. xi., 61, 67.

If a brother, even if duly authorised, have intercourse with a sister-in-law, except in time of misfortune, or a father with a daughter-in-law, they become outcasts. ix., 57-58, 63. Intercourse with sisters by the same mother, or with daughters-in-law, is a mortal sin. xi., 59.

For the first marriage of twice-born men, wives of equal caste are recommended; but for those who through desire proceed to marry again, the following rule holds: A Sûdra woman alone can be the wife of a Sûdra, she and one of his own caste, the wives of a Vaisya, those two and one of his own caste, the wives of a Kshatriya, those three and one of his own caste, the wives of a Brâhmana. The marriage of a Brâhmana to a Sûdra wife an inextinguishable offence. After death he will sink into hell. If he beget a son by her, he loses the rank of a Brâhmana. iii., 12-19. Libations of water shall not be offered to those born of an illegal mixture of the castes. v., 89. If a maiden court a man of low caste, let her father force her to live confined in her house. A

man of low caste making love to a maiden of the highest caste shall suffer corporal punishment. viii., 365-366. If a Sûdra have intercourse with a twice-born unguarded woman, he is to be castrated and lose all his property ; if guarded, he is to suffer death. If a Vaisya, or Kshatriya, with a guarded Kshatriya woman, or a Kshatriya with a guarded Vaisya woman, the Vaisya shall be fined 500 panas and the Kshatriya, 1000. If they offend with a guarded Brâhmani, who is also the wife of an eminent man, they shall be punished like a Sûdra or be burned in a fire of dry grass. For intercourse with a guarded Sûdra woman they shall be fined 1000 panas ; with an unguarded Kshatriya, a fine of 500 panas for a Vaisya. For intercourse with guarded Vaisya and Kshatriya women a Brâhmana shall be fined 1000 panas ; with unguarded or with a Sûdra, 500 ; with a woman of the lowest castes, 1000. viii., 374-385.

A twice-born man should not marry into a family, be it ever so wealthy, who neglects the sacred rites or the study of the Veda. iii., 6-7. No Brâhmana is to form a connection through marriage with one who has not been initiated. ii., 40.

A man aged 30 shall marry a maiden of 12 who pleases him, or a man of 24 a girl of 8 ; if the performance of his duties would otherwise be impeded, he must marry sooner. ix., 94. Allowing one's younger brother to marry first, marrying before one's elder brother, are minor offences, causing loss of caste. xi., 61, 67. The elder brother who marries after the younger, the younger brother who marries before the elder, the female with whom such a marriage is contracted, he who gives her away, and the sacrificing priest . . . all sink into hell. iii., 172.

#### ANCIENT CHINESE :

One must not marry a wife of the same surname with oneself Hence, in buying a concubine, if he do not know her surname, he must consult the tortoise-shell about it. xxvii., 78. Even after a hundred generations there may be no marriage between those of the same surname. xxviii., 63. None of the concubines in a house should be employed to wash the lower garments of a son. xxvii., 77. When a married aunt or sister or daughter returns home on a visit, no brother of the family should sit with her on the same mat or eat with her from the same dish. Even the father and daughter should not occupy

the same mat. *Ibid.* If a son have two concubines, one of whom is loved by his parents, while he himself loves the other, yet he should not dare to make this one equal to the former whom his parents love, in dress, or food, or the duties which she discharges, nor should he lessen his attentions to her after their death. If he very much approves of his wife, and his parents do not like her, he should divorce her. If he do not approve of his wife, and his parents say, "She serves us well," he should behave to her in all respects as his wife, without fail, even to the end of her life. Confucius said: "The elder son, even though 70, should never be without a wife to take her part in presiding at the funeral rites." xxvii., 316. An elder brother's wife and his younger brother do not wear mourning for each other; the object being to maintain the distance between them. xxvii., 147.

#### ANCIENT ROMANS:

The right of intermarriage between Roman citizens and Latins or aliens does not in all cases exist. *J. i., x., § 13.* Marriage forbidden within third degree. If marriage with the daughter of any person forbidden, marriage with granddaughter is likewise. *J. i., x., §§ 2, 3.* A man may marry his brother's daughter, but not a sister's daughter. *G. i., 62.* A man may not marry his brother's daughter. *J. i., x., § 3.* Of course, a brother and sister are forbidden to marry, whether they are the children of the same father and mother or of one of the two only. *G. i., § 6* and *J. i., x., § 2.* First cousins may marry. *J. i., x., § 3.* Marriage with a step-daughter, a daughter-in-law, a step-mother, a mother-in-law, forbidden. *G. i., § 63.* *J. i., x., §§ 6-9.* The relationship between slaves forms an impediment to marriage if father and daughter or brother and sister have been manumitted. *Ibid., § 10.* Marriages between adoptive ascendants and descendants, and between unemancipated adoptive brother and sister, or with adoptive maternal or paternal aunts, forbidden. *Ibid., §§ 1-3.* No right of intermarriage between patricians and plebeians. Table xi. Between free men or women and slaves. *J. i., x., § 13.*

#### FRENCH:

161. Marriage prohibited between all legitimate or natural ascendants and descendants and relatives by marriage in direct line. 162. Between legitimate or natural brothers and

sisters and relatives by marriage in same degree. 163. Between uncle and niece, aunt and nephew. 164. Nevertheless the king (the President of the Republic) may, for serious reasons, remove the prohibitions to marriages between brothers-in-law and sisters-in-law, and between uncle and niece, aunt and nephew.

348. The adopted shall remain in his real family and shall retain all his rights: nevertheless, marriage is prohibited: between adopter, adopted and his descendants; the adopted children of the same person, the adopted and the children who may be born to the adopter; the adopted and the husband or wife of the adopter, and reciprocally between the adopter and the husband or wife of the adopted.

PEOPLE OF THE UNITED STATES:

Marriage between negroes or Indians or Chinese and whites forbidden in several States. § 17, N. 2.

Marriage within third degree of civil reckoning prohibited. Illegitimate and half-blood kindred included. In some States first-cousin marriage also prohibited. Incestuous marriages void and offenders liable to imprisonment if aware of relationship. Some marriages of affinity prohibited by a local statute, and yet not void. § 16, N. 2.

## LECTURE IX

### BETROTHAL AND MARRIAGE CEREMONIAL AND RELATIONS BETWEEN HUSBAND AND WIFE EXCLUSIVE OF ECONOMIC RELATIONS

WE have already referred to betrothal and marriage ceremonial in discussing parental ownership and sexual choice. At present let us consider in greater detail the various methods in mate-getting with their significance for conjugal relations.

Marriage by  
capture

Forms of marriage by capture have been classified as forms which are essential to the marriage and forms which are merely symbolical. The former class may be redivided into cases (1) where the owner or guardian of the woman is not considered, (2) where the former is compensated after the abduction, (3) where abduction is a legal requirement although it is preceded by the consent of owner or guardian.

The capture may be either with or without the consent or connivance of the captured woman. This is an important distinction, although in discussions of the subject it is often overlooked. In the one case we have as a rule an exogamous occurrence, so to speak, conjugal captor and captive belonging to different hostile groups, and in the other case an endogamous occurrence, groom and bride belonging to the same group. It is perhaps rather difficult to distinguish



the latter type of capture from certain forms of more or less group-sanctioned elopement. The distinction has an obvious bearing upon parental control and upon the time relations of marriage by capture to marriage by purchase.<sup>1</sup>

Details of marriage by barter, service, or purchase were given in Lecture IV.; so that marriage by free consent alone remains to be considered. This arrangement occurs in all cultural stages except in those patriarchal societies where marriage by purchase is rigidly developed. In marriage by free consent the marriage gift or gifts are made to the bride herself. As we have seen in considering bride-price, dower, and dowry, a transition often occurs from marriage by purchase to marriage by free consent, or rather in such cases by free contract, for in this transition the contractual element in marriage by purchase is retained, the contract only being made directly with the bride.

Marriage by  
free consent

As ceremonial in general is the home of social *fossils* or *survivals*, so in betrothal and marriage rites many survivals of outgrown conjugal relations occur. Similarly incorporated in this ceremonial may be found relics of disused methods of mate-getting. Rape symbols, for example (sham running away with the bride, bride-catching or racing, lifting her over her new threshold, tearing her clothes, mock conflict with, or siege or avoidance of, her relatives, weeping or opposition on her part, etc.), are commonly explained in most cases as survivals of

Social *fossils* or  
*survivals* in  
ceremonial

Rape and  
purchase symbols

<sup>1</sup> It may be found that the endogamous form of marriage by capture is a transition form between marriage by purchase and marriage by free contract. The exogamous form, on the other hand, may exist side by side with all forms of mate-getting.

Distinction between ceremonial and non-ceremonial expressions

marriage by capture. Of interest is the fact that with the rape symbol there is often a considerable degree of freedom of choice on the part of the courted woman. In bride-racing, for example, she may have the privilege of not submitting to capture when she dislikes the would-be captor. In this connection the observer is warned not to confuse the rape symbol with the conventionalised expression of sexual shyness or opposition, or with grief at home-leaving on the part of the bride. Wedding-gifts, including forms of dower or dowry, are also explained as survivals of marriage by purchase. Again the observer is warned not to confuse the gift as an outgrown bride-price with the gift as a favour-winning offering, or compact of alliance, or pledge of devotion or of good conduct or of ability to support a family. In communities, for example, which are so economically developed that private property and exchange barely exist, ingratiatory gifts, or pledge-gifts, can of course not be interpreted as bride-price fossils. Such wooing-gifts are rather the incipient forms of a bride-price. Where, on the other hand, marriage by purchase is well defined in the lower classes of a society, whereas only marriage gifts are found in the upper classes, the latter may safely be taken as bride-price survivals.

Betrothal and marriage ceremonial anticipative of conjugal relations

Mating ceremonial is also frequently anticipative of the relations which are expected to exist between husband and wife. The bride, for example, may prepare or bring food or drink to the bridegroom, or she may eat or drink with him. (Ceremonial eating together is not always anticipative of future practices, for a taboo of commensality may follow the marriage

rites.) The bride may also prepare garments for the groom or his relatives. The groom may be given a whip, etc., by the bride's father, in token that she is passing from the subjection of father to that of husband. The wrists, fingers, ankles, or clothes of bride and groom may be bound together in sign of union. Rings, girdles, etc., may be exchanged. Many other union symbols, whether or not expressive of the breaking of sexual taboo, as has been alleged, are widespread. Cutting the hair of the bride, casting aside her ornaments, trinkets, etc., often enter into marriage ceremonial, in token, it is supposed, of wifely constancy and single-heartedness. Ceremonial indicative of the adoption of the bride by the groom's family is not uncommon under patriarchal organisation. Differences in social rank are often expressed in marriage ceremonial, the ceremonial of one class being different from that of another, or, as we have seen, gradations of rank among the wives are also shown in differences in marriage ceremonial. Marriage ceremonial in case of a widow or a divorced woman may also differ from that in use in the marriage of a virgin. Indian *pat-marriage* is a marked instance. The ceremony takes place at night and is much curtailed.

There are few known cases in which marriage is entered into with so little form or ceremonial that the coming together of relatives or group members does not celebrate the occasion. A marriage feast is generally customary, and festivities may be prolonged for several days, or even months. The requiring of formal witnesses by the group and of a more or less public announcement or contract is of great interest as expressing and defining the group's conception and

Public and religious  
celebration of  
marriage

sanction of marriage as a social act. The religious celebration and sanction of marriage has a like interest.

Effects of methods  
of mate-getting on  
position of wife

Marriage by purchase makes for a more favourable position for the wife than marriage by capture. It also makes separation from her husband much more difficult for her. A bride-price brings with it a full realisation of the economic value of the bride. She is looked after as a more or less valuable chattel. Marriages by purchase, including marriage by barter or service, may also be in the nature of a contract with the woman's first owner, her parents or male kinsfolk. If the agreement be broken, for example, either by the groom or the bride's family before the consummation of the marriage, the bride-price or marriage gifts or settlements may have to be returned, and sometimes a fine or indemnity has to be paid in addition. Again, if the woman die before marriage, sometimes before she has borne a child, her relatives may be bound to substitute another woman, commonly a sister, in her place, or, in either case, they may be bound to return the bride-price in whole or in part. If the wife leave her husband, or commit adultery, her family may be called upon to return her or the bride-price or some other form of indemnification to him. They may also be called upon to punish her for adultery. (Let us note in this connection that marriage by purchase has probably been influential in promoting the observance of female chastity before marriage and of wifely fidelity in marriage.) On the other hand, the bride's family frequently more or less tacitly stipulate for her protection and support. In case of neglect or maltreatment, she is entitled to return to her own family,

Points contracted  
for in marriage by  
purchase



and her family may even, in some groups, under such circumstances, retain the bride-price. If the bride-price is paid in installments, her family commonly retains special rights over her until the sum is paid up. Part of the bride-price may even remain intentionally unpaid, so that her family may retain a partial right in her. If she die, either at the hands of her husband or not, he may have to indemnify her family. Again, her family, instead of her husband, may exact compensation for injuries received by her.

The place of residence after marriage has also much weight in determining conjugal relations. As in the *ba'al* and *mot'a* marriages of the ancient Arabs, it may even enter into the form of marriage. Where a separate household is not established, the husband may live in the wife's group, the wife in the husband's, or both husband and wife may continue to live in his or her own group. (In this last case the intercourse of husband and wife may be required to be ceremonially clandestine for varying periods.) If the husband live with the wife's family, she is naturally more independent of him than if she go with him to his family. In the latter case, she is frequently adopted into his kin, thus cutting off still further her claim upon the group in which she was born. When she is adopted in this way, her husband's rank, goods, and in some cases name, become hers. She is identified with him. Similarly a husband living in his wife's group may be adopted into it. The nearness or remoteness of the home group of either bride or groom is also of weight in this connection.

Influence of place of residence after marriage

In the same group different practices in regard to residence, as well as methods of mate-getting, may

Different residence and mate-getting practices in same group



exist. Frequently important families retain their married daughters with their husbands and children, although the general practice of the group is for the wife to follow her husband. Again, if the groom is unable to pay the bride-price, he may live with his wife permanently or temporarily, until the sum is served out, etc., in her family. Even where marriage by service is well defined, there may be a tendency for the older and stronger men to rebel against it. Ceremonial marriage or betrothal visits are of interest in this connection, as they may represent transitions in residence customs.

Wifely  
subservience

Marital punishment

In spite of some of these restrictions upon marital power, the wife's relation to her husband is commonly one of subservience. In most societies he may punish her by death, mutilation, blows, imprisonment, etc., for infidelity, disobedience, or laziness. Casting her off either by sending her back to her family or by selling her to another man is also a common form of punishment. In most communities the divorced wife occupies an inferior social position. It is more or less difficult to remarry. Permission to remarry may even rest, as we have seen, with the husband who divorces her. Disowned by her own family as well, she may, where a prostitute class exists, be forced into it.

Inequality of subservience of wives in same family or community

In concubinage, the head-wife is not as subservient to her husband as the inferior concubines, and in the same society, whether ethnic or civil, wives of high rank or of higher economic or cultural classes may not be as subservient as those of low rank or of lower economic or cultural classes. In the following lecture on the economic relations of married persons, we

shall consider the economic subordination among wives in polygyny.

With all degrees of marital power or ownership it is more or less tacitly incumbent upon a husband to protect and provide for his wife. Moreover mutual conjugal sympathy and affection exist to a greater or less extent in almost all societies. Not uncommonly the wife is consulted and advised with by her husband and she may have considerable influence with him. Various practices and beliefs are also indicative of conjugal sympathy. Circumcision may be practised because of the belief that harm may befall the uncircumcised man's wife. Couvade practices and the custom of conjugal abstinence during pregnancy and lactation are frequently followed for the good of the mother as well as for that of offspring. In case of difficult labour, a great variety of practices are observed by the husband. A husband may not cut his hair lest harm befall his wife. Similarly when a man is hunting or fighting, certain *sympathetic* practices must be observed by his wife to insure his success or avert disaster.

Marital responsibilities

Practices indicative of mutual sympathy and affection

There is probably no non-economic condition which has as much effect upon the position of the wife as ancestor-worship. Under ancestor-worship, her function of maternity is plainly differentiated from purely economic functions. As the mother of sons who alone can continue the family worship, she is an important person. This fact is frequently expressed in the part assigned her in the celebration of the religious rites. It should be noted, however, that it is only the head-wife who profits, directly at least, from exercising these functions. It should also be

The effect of ancestor-worship upon the position of head-wife

noted that marked forms of marriage by purchase, disadvantageous to women, are usually found among ancestor-worshipping peoples.

As Professor Westermarck has well pointed out,<sup>1</sup> ethnographers are very remiss in observing conjugal relations. Their statements are frequently contradictory in regard to the subjection of wives and the consideration in which wives are held. In many cases no doubt this contradiction exists in the group itself, and the only fault of the observer is in failing to make this clear.<sup>2</sup>

Customs of sexual  
differentiation an-  
tagonistic to con-  
jugal sympathy

We should note, on the other hand, many general customs which, making for sexual differentiation in general, tend to separate the interests and check the sympathies of husband and wife. Cases in point are the existence of separate educational, political, juridical, religious<sup>3</sup> and moral systems for men and women, the hard and fast differentiation of almost all economic activities along sex lines, the differentiation of games and amusements, of dress, of language<sup>4</sup> and literature according to sex, sexual segregation in general, and in particular sexual taboos resulting from the idea of dangerous influences emanating from one sex to another, notably taboos of commensality, and of associating with women at times of nubility, men-

<sup>1</sup> See p. 230.

<sup>2</sup> See pp. 203, 204. Here again a woman student would have many opportunities for observing the life of women and children that male ethnographers have lacked.

<sup>3</sup> See p. 200 for reference to sex totems for a striking religious or perhaps, according to recent theory, economic differentiation.

<sup>4</sup> Husband and wife may never speak the same language. This sometimes happens in clan exogamy or in marriage by capture. Let us note incidentally that the probability of there being more marked differences between husband and wife in marriage by capture than in other forms of mate-getting is another reason for the unfavorable influence of the former upon the position of the wife.

stration, pregnancy, and child-birth, or at times of male crises, *i.e.*, initiation, during betrothal, or on the eve of hunting or fighting expeditions or religious celebrations.

NOTE A

METHODS OF MATE-GETTING.

Post, *Grundriss*, i., 286-320.

Wilutzky, *Vorgeschichte des Rechts*, i., 141-160. (Marriage by capture) *Ib.*, i., 163-185 (Marriage by purchase).

Hellwald, *Die menschliche Familie*, chap. xviii. (Marriage by purchase).

MARRIAGE BY FREE CONTRACT IN ENGLAND.

Howard, *A History of Matrimonial Institutions*, i., chap. vi.

MARRIAGE CEREMONIAL.

Westermarck, *The History of Human Marriage*, pp. 417-421.

Crawley, *The Mystic Rose*, pp. 33-58, 163-178, 350-365, 372-387.

RAPE SYMBOL.

McLennan, *Studies*, etc., chap. ii. and App. Note A.

Abercromby, *Marriage Customs of the Mordvins in Folklore*, i.

PUBLIC CELEBRATION OF MARRIAGE.

*Report of the Royal Commission on the Laws of Marriage*, London, 1894.

MARRIAGE BY PURCHASE A FACTOR IN FEMALE CHASTITY.

Hellwald, *Die menschliche Familie*, chap. xix.

PROTECTION OF MARRIED WOMEN BY THEIR FAMILIES.

Steinmetz, *Ethnologischen Studien*, etc., ii., 88-96.

MARITAL AUTHORITY AND SUBJECTION OF WIFE.

*Ib.*, ii., 254-305. (Includes discussion of child-betrothal, of parental or familial right over sexual choice in general and of punishments for illegitimate sexual intercourse)

## The Family

Westermarck, *The Origin and Development of the Moral Ideas*, London and New York, 1906, pp. 629-655.

*Kalevala*, Runes xxii., xxiv.

*Laws of Manu*, pp. 195-197, 327-336.

## EFFECT OF ANCESTOR-WORSHIP UPON WIFE'S STATUS.

Hearn, *The Aryan Household*, London and Melbourne, 1879, pp. 86-91.

## SEX TOTEMS.

Howitt, *Native Tribes of South-East Australia*, pp. 148-151.

## SEX TABOOS.

Crawley, *The Mystic Rose*, pp. 214-217.

*Pahlavi Texts in The Sacred Books of the East*, v., 276-285. Oxford, 1880. (In menstruation.)

## THE HAREM.

Hellwald, *Die menschliche Familie*, pp. 417-431.

## NOTE B

## EXTENT OF MARRIAGE BY CAPTURE.

An universal practice. McLennan, *Studies*, etc., chap. iv.; *Studies*, etc., Sec. Ser., chap. vi.

Capture neither an exclusive nor an actual form of marriage. Cases of rape should not be confused with regular forms of marriage. Letourneau, *The Evolution of Marriage and of the Family*, London, 1891, pp. 89-94.

Not an universal practice in its juridical sense, *i.e.*, as a form of marriage in distinction to possession through capture. Bernhöft, *Die Principien des europäischen Familienrechts in Zt. f. vergleichende Rechtswissenschaft*, ix., 392-394.

## THE MEANING OF THE RAPE SYMBOL.

A survival of marriage by capture. Lubbock, *The Origin of Civilisation*, p. 72.

Originated from capture within the group. An expression of parental, etc., opposition, of female coyness. Spencer, *The Principles of Sociology*, i., 634-639.

An expression of the sorrow of the bride on leaving her family. Starcke, *The Primitive Family*, pp. 218, 262.

Symbolises former rape practices, likewise the subjec-



tion of the wife. Letourneau, *The Evolution of Marriage*, p. 95.

Originated in the desire to obtain for nothing what could otherwise be acquired only by a purchase fee. Wake, *The Primitive Human Family* in *J. A. I.*, ix., 10.

Neither marriage by capture nor marriage by purchase is as common an occurrence as is usually supposed, for so-called rape symbols and marriage gifts are not survivals of such practices. They are expressions of sexual shyness, or opposition, or pledges of union, exchanges of personality. Crawley, *The Mystic Rose*, pp. 367-370, 387-388.

The lifting of the bride over the threshold is not a rape symbol. Crooke, *The Lifting of the Bride* in *Folklore*, xiii., 226 ff.

#### ORDER OF GENESIS OF METHODS OF MATE-GETTING.

Marriage by purchase developed from marriage by capture. Lippert, pp. 42, 95-118; Kohler in *Zt. f. vergleichende Rechtswissenschaft*, v., 336, vi., 333 ff.; Dargun, *Mutterrecht und Vaterrecht*, i., 152-153; Spencer, *The Principles of Sociology*, i., 637.

Marriage by capture is prior to marriage by purchase. The offering of compensation for a stolen bride to escape the vengeance of her family passed into the custom of offering them presents beforehand. Westermarck, *The History of Human Marriage*, p. 401.

This theory originated with Wilken: *Over de Primitieve Vormen van het Huwelijk en dem Oorsprong van het Gezin. De Indische Gids* (1880), ii., 660-661.

The practice of wife-purchase has an important place in the development of the system of composition. Compensation for bride-stealing may in many cases have been the source of composition in general. Steinmetz, *Ethnologische Studien*, etc., i., 422-427.

Marriage by capture is an outcome rather than an antecedent of marriage by purchase. Hildebrand, *Recht und Sitte auf den verschiedenen Kulturstufen*. Jena, 1896, first part, pp. 7-10.

Marriage by capture is a comparatively late form of bride-getting. The rape symbol is characteristic of warlike

tribes in which war-captured wives are prestigious trophies.  
Grosse, *Die Formen der Familie*, etc., pp. 105-108.

## NOTE C

Make a detailed study of betrothal customs and ceremonial. Make a comparative study (1) of marriage by capture, showing when it is endogamous and when exogamous, (2) of marriage by purchase (barter or service) and endogamy and exogamy, (3) of marriage by barter, (4) of marriage by free consent or free contract in relation to other forms of mate-getting, (5) of marriage by free contract, noting particularly the form and content of the contract, (6) of alleged rape symbols, (7) of alleged bride-price fossils (noting the economic development in general of the group). Give a history of prescribed (1) public (and non-religious), of (2) religious celebration of marriage. Make a comparative study of marriage or betrothal visits and customs of residence. Study the differences in sexual segregation and consequent effect on conjugal relations in different classes in a given civilisation. Study the exclusion of woman from magical or religious organisations, noting in particular the secrecy observed toward uninitiated males and females of all ages.

## NOTE D

## VEDDAHS :

Marriage ceremonial differs in different districts. In some, no ceremonial whatsoever. In others, presents brought to parents of the bride, and in others, again, couple make for each other and exchange girdles. p. 461.

Slavish subordination of wives does not exist. Treated kindly and in some cases even respectfully. p. 468.

## YAHGAN :

Bride paints her face, and puts on necklaces which she has been presented with. Hair on her forehead is cut. H. & D., vii., 378.

Marriage by capture is sometimes found. x., 334.

Before and after marriage husbands work for parents of wife until she bears a child. They are then exempt ; but thereafter occasionally make presents to parents-in-law of fish, grease, dug-

outs, harpoons, and always bound to come to aid of father-in-law if necessary. vii., 172.

Young husbands, particularly those who do not own their own dug-out, live for a long time with parents of wife to whom they tender many services; but this does not happen in the case of older men or of men who are noted for physical strength or for their influence with their fellows. The new household becomes independent when the husband makes for himself a dug-out. In exceptional cases, husband lives for good with wife's family. H. & D., vii., 378. Son-in-law and daughter-in-law treat parents-in-law with great respect. vii., 172.

Neither father nor brother interfere in a daughter's or sister's behalf against her husband, unless she is seriously maltreated. Then they carry her off and give her to another man. vii., 172.

The wife must obey husband. x., 332.

The well-behaved wife independent and respected. x., 332.

Childbirth generally takes place out-of-doors. Men not present. H. & D., vii., 375.

#### CENTRAL AUSTRALIANS:

Marriage by capture at present, whatever it may have been in the past, by no means the rule. It is only comparatively rarely that a native goes and seizes upon some lubra in a neighbouring tribe; by far most common method of getting a wife is by means of an arrangement made between brothers or fathers of respective men and women, whereby a particular woman is assigned to a particular man. p. 104.

When a man is desirous of securing a woman living in a distant group and belonging to the proper class for himself, it makes no difference whether she be already assigned or not to some other man—indeed she is perfectly sure to be so—he goes into the bush taking a small wooden Churinga marked with a design of his own totem and accompanied by 2 or 3 friends who may be of any relationship to him. All night long the men keep up a low singing of Quabara songs together with the chanting of amorous phrases of invitation addressed to the woman. At daylight the man stands up alone and swings the Churinga causing it first to strike the ground as he whirls it round and round and makes it hum. Sound of humming is carried to ears of far distant woman and has power of compelling affection and of causing her sooner or

later to comply with summons. pp. 541-542. A charmed head-dress is sometimes worn conspicuously by man so that desired woman can see it. By some mysterious means her attention is drawn to it and she becomes violently attracted to man. At night, if possible, when all is quiet she creeps into his camp. pp. 542-543. As love charms women will sometimes make and "sing" special fur-string necklets, which they place around the man's neck, or they may simply charm a food and give it to the man to eat. p. 548.

In his wallet the native carries a kind of knout which has the form of a skein of string, and is supposed, by men and women alike, to be of especial use and efficacy in chastising women. p. 30.

Sound of bull-roarer believed by women to be voice of spirit *Twanyirika* who has taken a boy away from them into the bush. The existence of this spirit is taught to both uninitiated youths and women. p. 246.

#### POINT BARROW ESKIMO :

Several cases where bridegroom became a member of wife's family. p. 410.

A man has unlimited authority in his own hut, but with few exceptions his rule is mild and position of women is one of comfort and enjoyment. p. 414. There were a few cases of wife-beating, chiefly among the younger men. In one case a wife gave her husband who had attempted to abuse her a thorough beating and then left the house. p. 414. Disagreements between man and wife sometimes lead to blows in which the man does not always get the best of it. p. 41.

Wife consulted on all important occasions. p. 427.

Small rude tents used as habitations for women during confinements and for sewing-rooms when they are working on deerskins in the autumn. p. 86. In each village one or more large buildings used for dancing and for men's working-room or club-house. pp. 79-80.

#### BEHRING STRAIT ESKIMO :

Groom takes a new suit of clothes to bride's home, puts them on her and she becomes his wife. p. 291.

If parents of either have no children at home, newly married



couple go to live with them, otherwise they set up their own establishment. The wife is considered to become more a part of the husband's family than he of hers. p. 291.

In one case a woman walked 75 miles in order that her confinement might take place among her own people. p. 290. *Kashim* or club-house the common sleeping-place for men. Women and children live in houses apart, and men sleep with their families only occasionally. p. 285. The dwelling-houses are the domain of the women. p. 288. During festivals, dances, etc., women gather in *Kashim* as spectators, and sometimes take part in performances. p. 287. The *Kashim* is essentially the house of the men. During performance of certain rites women rigidly excluded. p. 286. Games played there in winter by men and boys and twice or three times a day food brought by women from surrounding houses. Unmarried men sleep there at all times as they have no recognised place elsewhere. p. 286. Among Malemut and southward the girl at puberty must live by herself in a corner of the house with her face to the wall for four days. p. 291. Among Unalit if a young man should approach a girl during her four days' seclusion at puberty he would become visible to every animal he might hunt. p. 291. Formerly among Unalit a woman in her first confinement was isolated for a certain period. In one case a woman was put in a small brush hut covered with snow and her food was handed her by her husband through the small opening. Despite intensely cold weather, kept there about two months. p. 289. Those possessing power over the invisible world are usually men, but this power is sometimes held by women. p. 427.

#### CENTRAL ESKIMO :

Sometimes man and wife do not set up a household at once, but each remains at home. Property necessary for establishing new family is hunting gear of man and knife-scraper and lamp and cooking-pot of woman. Usually the young couple must begin housekeeping with young wife's family, and young man, if belonging to a strange tribe, must join that of his wife. Not until after his parents-in-law are dead is he entirely master of his own actions. Residence with wife's family a check upon polygyny. Only when new family settles on its own



account is a man at full liberty to take additional wives. p. 579.

Husband not allowed to maltreat or punish his wife ; if he does she may leave him at any time. p. 579.

In confinements women isolated in small huts or snow houses. p. 610. For two months after delivery a woman is not allowed to enter any hut but her own. p. 611. For a year after death of an infant a woman may not enter a hut until men in it have come out. p. 612.

#### WYANDOTS :

Groom makes such presents to mother as he can. Bridegroom and bride make promises of faithfulness to parents and women councillors of both. p. 64.

For a short time at least bride and groom live with bride's mother. The time when they will set up housekeeping for themselves is usually arranged before marriage. p. 64. Husbands live in clans of wives. Retain all rights and privileges in their own clan. p. 63.

#### MELANESIANS :

Araga : Sham fight between kinsmen of bride and kinsmen of groom at marriage feast. p. 240.

Lepers' Isl. : Formerly couple ate together as a sign of union. p. 242.

Banks' Isl. : A jealous wife or husband or a husband quarrelling with his wife would formerly commit suicide. pp. 243-244.

Pentecost Isl. : Reserve in speaking exercised by engaged couples before giving of property for girl is complete, *lalag*. p. 45.

#### EWĒ-SPEAKING PEOPLES :

At puberty a girl visits her friends and relatives decked in her best clothes and jewelry. Should she be unbetrothed, a suitor sends a man and a woman to her father's house with two large flasks of rum. If accepted, flasks are returned to him empty. He then sends two more full flasks, with two heads of cowries and two pieces of cotton cloth for the girl. Then *head-money* proper is negotiated. Gift of cowries and cloth constitutes betrothal. On wedding-day groom sends a messenger about day-break with rum to bride's parents, who are reluctant to send her

to him. So with a second messenger. At the third messenger, towards sunset, her family escort her to groom's house. Feasting, and about midnight four matrons conduct bride to groom's room and say: "If she pleases you and behaves well treat her kindly. If she behaves ill, correct her." After living with groom seven days, she returns to her old home. Seven days later she cooks food and sends it to her husband. He sends a present in return, and that evening she returns to him permanently. A second feast follows. pp. 155-157.

Should a betrothed girl die, parents bound to substitute another. p. 206. When an adulterous wife who is sold by her husband to her paramour dies, her family must replace her by another girl or refund head-money to second husband. p. 203.

Head wife consulted by husband, and sometimes her opinion has weight. p. 204.

## TSHI-SPEAKING PEOPLES :

A wife occupies a position between that of a servant and a slave. Never regarded as equal of her husband. p. 114.

Three months after childbirth mother makes offerings to family god, and only then allowed to go about town. p. 233.

## YORUBA-SPEAKING PEOPLES :

Wedding-day appointed after consultation with priest. Not uncommon for newly married couples to visit some shrine and offer sacrifice together. pp. 153-154.

In divorcing for adultery husband can claim back bride-price. If wife is divorced for any cause but adultery, husband can not claim back bride-price. p. 186. When a man systematically neglects his wife, he can be summoned by her family to a palaver. But, if he fail to improve, she may leave him, and sometimes, if he be of inferior rank, her family tie him up and flog him. p. 187.

## THOMPSON RIVER INDIANS :

In another form of marriage [besides "placing down"], equally honourable, and probably commonest, girl's parents singled out man, and approached him or his parents. The betrothal was an inviolable engagement. The young man, when invited, did not at once repair to the bride's house to claim her, but generally

waited several days until told by his parents to do so. He stayed at her parents' house several days, then took her to his father's house, where she was well treated and not allowed to do any work. After a few days or weeks or even a month or more, young man's father called neighbours together and informed them of his intention to conduct newly-married couple back to house of bride's father. Friends and neighbours then gave bridegroom's father presents of food and other articles. On day set father presented his son, and mother her daughter-in-law, with a new suit of clothes; father generally gave daughter-in-law two horses. Bride's father given presents of food, and a feast made for all. Afterwards couple gave their new clothes to bride's parents, who gave them to some of bride's kin. Bride and groom left with bride's family. After a while the friends made a return visit, conducting couple back to bridegroom's parents, couple being mounted on horses presented to bridegroom by father-in-law. p. 323. Among Lower Thompsons, wealthy people, if pleased with the son-in-law, returned marriage presents to him. This custom was exceptional, and may have been introduced from Coast Tribes. Done only by some of the rich. Sometimes a part of the presents only was returned. p. 322.

If a young man intentionally touched a young woman with his arrow, the same as asking her to become his wife. If she hung down her head, it was taken as an assent. Two days afterwards young man went to her house, and if people called him son-in-law and treated him well, he knew that he was accepted. p. 324. If a man touched a girl even accidentally, he had to marry her. If he touched her naked breasts or heel, he transformed her at once into his wife, and there was no retraction for either party. p. 323. Youngwomen also had the privilege of touching young men. A man not compelled to take to wife girl who had touched him, though he usually did so. Some girls who touched a man and were not accepted felt greatly ashamed and committed suicide. p. 324. Custom of marriage by "touching" has long been out of use; but the other forms of marriage still obtain. p. 325. Sometimes a young man would go to a girl's house after everyone had gone to bed. He would quietly lie down beside her on edge of her blanket. Sometimes she would give an alarm and he would have to run out, but often she would ask who he

was. If she did not care for him she told him to leave or struck him ; but if she liked him she said no more. He lay this way on top of her blanket, she underneath, neither of them talking till near daybreak ; then he crept noiselessly away. He would come and do likewise for three nights more. On the fourth and last night she would put her arm and hand outside the blanket. This was a sure sign that he was accepted. Therefore he took her hand in his. From that moment they were man and wife. After a feast prepared by girl's mother young man would henceforth live with his wife. Sometimes the girl's parents gave no feast, lad's parents did ; then the girl's father took her to bridegroom's house, and she lived with him and his people. In this, as in all forms of marriage by touching, as a rule, no presents were given nor were ceremonial visits made. p. 324.

If a man resides with his wife's people for a year and makes his home mostly among them, considered a member of that tribe or band. The same is the case with a woman who lives among her husband's people. p. 325. A married couple lived with or visited their respective parents just as they felt inclined. p. 322. On the whole wife followed husband to live with his family. p. 292.

Considered man's duty to beat wife if she were lazy, or admonish her, etc. p. 295.

It was also his duty to protect her. p. 295. If a woman has a hard delivery, her husband goes to the water and bathes. He must dive or plunge once so that his whole body is covered. Then he runs to his house nude with exception of his breechcloth, and walks or runs around it four times, following sun's course. Then he enters, and stands at his wife's head. After this she will give birth to the child quickly. p. 305. Widows and widowers had to sleep on a bed made of fir branches spread with rose-bush sticks for a year. They had to wash themselves in creeks, etc., for a year, otherwise they would be visited with sore throat, loss of voice or of sight. Forbidden to eat venison or flesh of any kind, etc., for a year. Abstained from smoking for half a year. The hair was cut short or square across the neck. Buckskin thongs worn around the ankles, knees, and neck were cut off at the end of a year unless they had fallen off sooner. A widower should not marry unless they had fallen off. pp. 332-334.



Two or three generations ago women seldom or never smoked. Smoking was looked upon as privilege solely of men. Only such women smoked as laid claim to being strong in "medicine." p. 300. Women played a game of dice with beaver teeth. A game played with a number of sticks was engaged in almost altogether by the men. A ring-and-spear game was played altogether by men. A guessing game was played principally by men. Many Spences Bridge women used to play it, but they had a different song for it from the men. A ball game was played by young men. Sometimes for the amusement of the men, the women were persuaded to play la crosse. Shooting games, jumping games, foot- and horse-races, wrestling matches, tugs-of-war, etc., played by the boys and men. Swimming a favourite amusement. The men and women always bathe in different places. pp. 272-281. Women have no voice in the war councils, nor in any other matters of importance. p. 290.

Every woman had to isolate herself during menstruation. To eat in company with, to have any intercourse with, or even to wear clothes or moccasins made or patched by a woman during this period would give the hunter bad luck, and also cause bears if they smelled him to attack him fiercely. p. 326.

#### KABYLES:

He who follows a marriage procession and throws stones or dung, fined 1 real. Relatives of groom escort bride, firing off guns. Children and men follow and excite relatives to fire by stone-throwing. This regulation is to prevent the quarrels caused by this practice. iii., 380. Imecheddalen: The day when the bridegroom is to lead the bride to his house all the men of the village accompany him to her house. He who stays away is fined 2 reals. iii., 417.

Ir'il-en-zekri. If a bride dies in her husband's home before he has completed payment of *thámamth*, he must complete it. If she dies in her father's house before going to her husband, he need not complete payment, but neither need father return what he has already received. iii., 436. Ait Ousammer, etc. He who marries a woman and refuses to pay over *thámamth*, fined 50 reals. If bride's parents refuse to hand her over, they are compelled to do so and are fined 50 reals. iii., 378. Akbil. If a bridegroom



leave his wife in her father's house one year (when he has not enough money to complete the *thâmamth* or when he wishes to marry another) and her father complain, he is fined 10 reals. iii., 365. Iâzzouzen Bouadda. If a woman desert her husband, her relatives give her husband 150 reals, if their fortune suffices ; if not, her *kharouba* pays the sum. iii., 436. Kcar. He who kills his wife pays 50 reals to the relatives and a fine of 30 reals. iii., 440. Ait Souala. If a widow with children remarries and then leaves her second husband to live with her children, they must return from their patrimony the *thâmamth* paid by him. iii., 432.

Ait Aïssi. Murder of a husband is a crime against community and wife is stoned by entire village. iii., 71. If a husband strike his wife and she withdraw to home of another where her husband follows her, he (the husband) is fined 1 real. iii., 345. Ibethran. Everyone clothes his wife and treats her as he pleases; the complaints of a wife in this respect are not listened to. iii., 434. In illness wife must be well cared for by husband. He must furnish her with medicines and nourishing food. ii., 169.

#### ANCIENT ARABS :

Men stand superior to women in that God hath preferred some of them over others, and in that they expend of their wealth ; and the virtuous women, devoted, careful (in their husbands' absence), as God has cared for them. But those whose perverseness ye fear, admonish them and remove them into bed-chambers and beat them ; but if they submit to you, then do not seek a way against them. iv., 38-39. Your women are your tilth, so come into your tillage how you choose. ii., 224.

Those of you who die and leave wives behind, let these wait by themselves for four months and ten days ; and when they have reached the prescribed time, there is no crime in them for what they do with themselves in reason. ii., 234. And when you ask them [the Prophet's wives] for an article, ask them from behind a curtain ; that is purer for your hearts and for theirs. There is no crime against them if they speak unveiled to their fathers, or their sons, or their brothers, or their brothers' sons, or their sisters' sons, or their women, or what their right hands possess xxxiii., 53, 55.

#### ANCIENT HEBREWS :

Samson and his parents went down to see the woman Samson

wished to marry. Samson talked with her and she pleased him well. And after a time he returned to take her. . . . His father went down unto the woman : and Samson made there a feast ; for so used the young men to do. The feast lasted seven days. Judges xiv., 5-17.

When the daughters of Shiloh came out to dance in dances, the children of Benjamin lay in the vineyards and came out and took them wives, according to their number, of them that danced, whom they caught. Judges xxi., 20-23. If thou seest among the captives a beautiful woman and hast a desire unto her, that thou would have her to thy wife ; thou shalt bring her home to thine house and she shall shave her head and pare her nails ; and she shall put the raiment of her captivity from off her, and shall remain in thy house and bewail her father and her mother a full month : and after that thou shalt go in unto her, and be her husband, and she shall be thy wife. And it shall be, if thou have no delight in her, then thou shalt let her go whither she will, but thou shalt not sell her at all for money, thou shalt not make merchandise of her, because thou hast humbled her. Deut. xxi., 10-14.

Boaz said : Ruth, the Moabitess, have I purchased to be my wife. Ruth iv., 10. In lieu of bride-price, Saul required 100 foreskins of the Philistines from David. 1 Sam. xviii., 25. And the servant sent by Abraham to get a wife for his son Isaac, brought forth jewels of silver, and jewels of gold, and raiment, and gave them to Rebekah : he gave also to her brother and to her mother precious things. Deut. xxiv., 53.

A certain Levite gave over his concubine to some revellers to abuse in order that he himself might escape. Judges xix., 22-28. If a wife make a vow and her husband disallow her on the day that he hears it, he shall make her vow wherewith she bound her soul, of none effect : and the Lord shall forgive her. Numb. xxx., 6-8.

Therefore shall a man leave his father and his mother and shall cleave unto his wife. Gen. ii., 24.

Anticipating the appearance of Jehovah on Mt. Sinai, Moses said unto the people : " Be ready against the third day : come not at your wives. Ex. xix., 15.

#### BABYLONIANS:

If a man who has brought a present to the house of his father-

in-law and has given the marriage settlement, look with longing upon another woman and say to his father-in-law, "I will not take thy daughter," the father of the daughter shall take to himself whatever was brought to him. § 159. On the other hand, if the father say, "I will not give thee my daughter," he shall double the amount which was brought to him and return it. § 160. If the groom's friend slander him, and if his father-in-law say, "My daughter thou shalt not have," he (the father-in-law) shall double the amount which was brought to him and return it, but his friend may not have his wife. § 161. If his father-in-law do not return to him the marriage settlement, he may deduct from her dowry the amount of the marriage settlement and return (the rest) of her dowry to the house of her father. § 164.

If a woman bring about the death of her husband for the sake of another man, they shall impale her. § 153.

#### ANCIENT HINDUS :

Brâhma rite—gift of a daughter, after decking her with costly garments and honouring her by presents of jewelry, to a man learned in the Veda and of good conduct, whom the father himself invites. Daiva rite—gift of a daughter, decked with ornaments, to a priest who duly officiates at a sacrifice, during the course of its performance. Ârsha rite—gift of a daughter when the father has received from the bridegroom for the fulfilment of the sacred law a cow and a bull or two pairs. Prâgâpatya rite—gift of a daughter after the father has addressed the couple, "May both of you perform together your duties." Âsura rite—when groom receives a maiden after giving as much wealth as he can afford, according to his own will, to the kinsmen and the bride herself. Gândharva rite—voluntary union of a maiden and her lover, springing from desire. Râkshasa rite—forcible abduction of a weeping maiden from her home after her kinsmen have been slain or wounded. Pisâkas rite—seduction of a sleeping, intoxicated, or disordered girl by stealth,—a base and sinful rite. First six lawful for a Brâhmana, four last for a Kshatriya and, excepting the Râkshasa rite, for a Vaisya and a Sûdra. The sages state that the first four are approved for a Brâhmana, the Râkshasa, for a Kshatriya, and the Âsura for a Vaisya and Sûdra. The *Institutes of Manu* declare that the Pisâkas and Âsura rites are unlawful, and must never be used.

For Kshatriyas the Gândharva and Râkshasa are permitted by the sacred tradition. The ceremony of joining hands is prescribed for marriages with women of equal caste. On marrying a man of higher caste, a Kshatriya bride must take hold of an arrow, a Vaisya bride of a goad, and a Sûdra female of the hem of a bridegroom's garment. iii., 20-24. For stealing a woman a man after death becomes a bear. vii., 67.

If, after one damsel has been shown, another be given to the bridegroom, Manu ordains that he may marry them both for the same price. viii., 204. No good man has ever promised a daughter to one man and given her to another. ix., 99. If the giver of the nuptial fee dies, the damsel, *with her consent*, shall be given in marriage to his brother. ix., 97.

No crime, causing loss of caste, is committed by swearing falsely to women, the objects of one's desire, at marriages. viii., 112. The husband who weds his wife with sacred texts always gives happiness to her, in this world and in the next. v., 153. The husband is referred to as the lord and *owner* of his wife. ix., 32, 42-43, 46. If a wife obeys her husband, she will for that reason alone be exalted in heaven. . . . A faithful wife who desires to dwell after death with her husband must never do anything that might displease him, alive or dead. . . . By violating her duty towards him, after death she enters the womb of a jackal and is tormented by diseases. v., 155-156, 160-161, 164-166. Having committed a fault she may be beaten in the same way as a son, etc. viii., 299-300. In childhood a female must be subject to her father; in youth, to her husband; when her lord is dead, to her sons; a woman must never be independent. . . . The betrothal by the father or guardian is the cause of the husband's dominion. Though destitute of virtue, or seeking pleasure elsewhere, or devoid of good qualities, yet a husband must be constantly worshipped as a god by a faithful wife. v., 147-167.

A wife is protected by her husband. She may not be cast off except for a crime causing loss of caste—penalty for casting her off a fine of 600 panas by the king. He who carefully guards his wife preserves the purity of his offspring, virtuous conduct, his family, himself, and his means of acquiring merit. viii., 389; ix., 3, 57. Between wives who are destined to bear children,



who secure many blessings, who are worthy of worship and irradiate their dwellings, and between the goddesses of fortune who reside in the houses of men there is no difference whatsoever. Offspring, the due performance of religious rites, faithful service, highest conjugal happiness, and heavenly bliss for the ancestors and oneself, depend on one's wife alone. ix., 26, 28. One's wife must be considered as one's own body. iv., 184. Where women are honoured by father, brothers, husbands, brothers-in-law, there the gods are pleased; but where they are not honoured no sacred rite yields rewards. Where they live in grief, the family soon wholly perishes. iii., 55-58. The husband receives his wife from the gods; he does not wed her according to his own will, doing what is agreeable to the gods; he must always support her while she is faithful. ix., 95. Men, *i. e.*, relatives, should honour women on holidays and festivals with gifts of ornaments, clothes, and dainty food. iii., 59.

#### ANCIENT CHINESE :

The bridegroom himself stands by the carriage of the bride, and hands to her the strap to assist her in mounting,—showing his affection. Having that affection, he seeks to bring her near to him. It was by such reverence and affection for their wives that the ancient kings obtained the kingdom. In passing out from the great gate of her father's house, he precedes and she follows, and with this the right relation between husband and wife commences. The woman follows and obeys her husband : in her youth she follows her father and elder brother; when married she follows her husband; when her husband is dead she follows her son. "Man" denotes supporter. The dark-coloured cap (the dress in sacrificing), and the preceding fasting and vigil, with which the bridegroom meets the bride, make the ceremony like the service of spiritual beings. Husband and wife ate together of the same victim,—thus declaring that they were of the same rank. Hence while the wife herself had no rank, she was held to be of the rank of her husband, and she took her seat according to the position belonging to him. On the day after the marriage, the wife having washed her hands, prepared and presented a sucking-pig to her husband's parents; and when they had done eating, she ate what was left, as a mark of their special



regard. They descended from the hall by the steps on the west, while she did so by those on the east;—so was she established in the wife's or mistress's place. At the marriage ceremony they did not employ music,—having reference to the feeling of solitariness and darkness natural to the separation from parents. There was no congratulation on marriage,—it indicates how one generation of men succeeds to another. xxvii., 439–442. The gentleman went in person to meet the bride, the man taking the initiative and not the woman. xxvii., 440. The ceremony of marriage was intended to be a bond of love between two families of different surnames, with a view, in its retrospective character, to secure the services in the ancestral temple, and in its prospective character, to secure the continuance of the family line. Therefore the superior men set a great value upon it. Hence in regard to the various introductory ceremonies,—the proposal, with its accompanying gift (always a goose); the inquiries about the lady's name; the intimation of the approving divination; the receiving of the special offerings; and the request to fix the day,—these all were received by the principal party on the lady's side, as he rested on his mat or leaning-stool in the ancestral temple. When they arrived, he met the messenger and greeted him outside the gate, giving place to him as he entered, after which they ascended to the hall. There were the instructions received in the ancestral temple, and in this way was the ceremony respected, and watched over, while its importance was exhibited and care taken that all its details should be correct. The father himself gave the special cup to his son, and ordered him to go and meet the bride; it being proper that the male should take the first step. The bride's father met him outside the gate, and then the son-in-law entered, carrying a wild goose. After the customary bows and yieldings of precedence, they went up to the ancestral hall, when the bridegroom bowed twice and put down the goose. Then and in this way he received the bride from her parents. After this they went down, and he went out and took the reins of the horses of her carriage, which he drove for three revolutions of the wheels, having handed the strap to assist her in mounting. He then went before and waited outside his gate. When she arrived, he bowed to her as she entered. They ate together of the same animal and joined in sipping from the cups made of the same melon; thus

showing that they now formed one body, were of equal rank, and pledged to mutual affection. The respect, the caution, the importance, the attention to secure correctness in all the details, and then the pledge of mutual affection,—these were the great points in the ceremony. xxviii., 428-430. Confucius said: "The family that has married a daughter away does not extinguish its candles for three nights, thinking of the separation that has taken place." After three months she presents herself in the ancestral temple (of her husband) and is styled "the new wife that has come." A day is chosen for her to sacrifice at the shrine of her (deceased) father-in-law; expressing the idea of her being now the established wife. xxvii., 322. Rising early the morning after marriage, the young wife washed her head and bathed her person, and waited to be presented to her husband's parents, which was done by the directrix, as soon as it was bright day. She appeared before them, bearing a basket, with dates, chestnuts, and sliced dried spiced meat. The directrix set before her a cup of sweet liquor, and she offered in sacrifice some of the dried meat and also of the liquor, thus performing the ceremony which declared her their son's wife. The father-in-law and mother-in-law then entered their apartment, where she set before them a single dressed pig, thus showing the obedient duty of their son's wife. Next day the parents united in entertaining the young wife, and when the ceremonies of their severally pledging her in a single cup, and her pledging them in return, had been performed, they descended by the steps on the west and she by those on the east, thus showing that she would take the mother's place in the family. xxviii., 430-431. Zang-zze asked, "If the lady die before she has presented herself in the ancestral temple, what course should be adopted?" Confucius said: "Her coffin should not be removed to the ancestral temple, nor should her tablet be placed next to that of her mother-in-law. The husband should not carry the staff; nor wear the shoes of straw; nor have a special place for wailing. She should be taken back, and buried among her kindred of her own family,—showing that she had not become the established wife." xxvii., 322. The ceremony of marriage is the beginning of a line that shall last for a myriad ages. There must be sincerity in the marriage presents. Presents are interchanged before the parties see each other,—this reverence serving to

illustrate the distinction that should be observed between man and woman. xxvii., 439, 440.

When an aunt or sister died leaving no son, if her husband also were dead, and there were no brother or cousin in his relative circle, some other of her husband's more distant relatives were employed to preside at her mourning rites. None of a wife's relatives, however near, could preside at them. If no distant relative even of her husband could be found, then a neighbour on the east or the west was employed. Some say one of her relatives might preside, but her tablet was placed by that of the proper relative of her husband. xxviii., 162-163. For a female member of the family who had married, and for whom therefore mourning was not worn, the hempen sack was assumed. xxvii., 374. Slight mourning is worn for an aunt and an elder and younger sister, when they have been married; the reason being that there are those who received them from us, and will render to them the full measure of observance. xxvii., 147.

The partner of a son of Heaven is called "the queen"; of a feudal prince, "the helpmate"; of a great officer, "the attendant"; of an inferior officer, "the serving woman"; of a common man, "the mate." From the honourable women downwards, each member of the harem (royal) called herself "your handmaid." xxvii., 113. In sacrificing to a husband he is called "the sovereign pattern." xxvii., 118. A bride should be admonished to be upright and sincere. Faithfulness is specially the virtue of a wife. Once mated with her husband, all her life she will not change her feeling of duty to him, and she will not marry again. xxvii., 439.

What are the things which men consider right? Righteousness on the part of the husband, and submission on that of the wife. xxvii., 379-380. Anciently it was required of a man to show respect to his wife and son. The wife was the hostess of the deceased parents; could any husband dare not to show her respect? xxvii., 266.

The observances of propriety commence with a careful attention to the relations between husband and wife. The men occupied the exterior of the house, the women the interior. The mansion was deep and the doors were strong, guarded by porter and eunuch. The men did not enter the interior, the women did not come out into the exterior. The wife did not presume to

hang up anything on the pegs or stand of her husband ; not to put anything in his boxes or satchels ; nor to share his bathing-house. It was not until husband and wife were seventy that they deposited their pillows and mats in the same place. xxvii., 470-471. When a young lady is promised in marriage, unless there be some great occasion, no male enters the door of her apartment. xxvii., 77. Male and female without the intervention of the matchmaker do not know each other's name. Unless the marriage presents have been received there should be no communication or affection between them. xxvii., 78.

#### ANCIENT ROMANS :

Wife defeats husband's acquisition of marital power through one year's possession by absenting herself for three consecutive nights in each year. Table vi. Formerly women might fall under marital power in one of three ways, viz : by use, by the ceremony of spelt cake, and by fictitious purchase. Use brought a woman under marital power when she continued as a married woman to occupy her husband's house for a whole year without interruption, for she was then, as it were, acquired by uninterrupted use through one year's possession, passing into her husband's family and filling the place of daughter. But this regulation has been abolished, partly by legislation and partly by disuse. In the ceremony of the spelt cake a kind of sacrificial offering to Jupiter is made in the presence of ten witnesses in which spelt cake is used and many observances gone through. This right is practised even in our times ; for, the greater flamens—that is, the priests of Jupiter, Mars, and Quirinus, as also the sacrificial priests, unless they are the issue of a marriage by the spelt cake ceremony, cannot be selected nor can they hold office, unless their own marriage was contracted in the same way. Women fall under the marital power through a fictitious purchase made by means of the process of formal conveyance—that is, a kind of imaginary sale, in which, in the presence of not less than five witnesses, Roman citizens, above the age of puberty, and a scale bearer, the husband buys the woman. The woman goes through this form with her husband in order that she may stand related to him as a daughter. She may also go through it with her husband or with some other person for a judiciary purpose, *e. g.* to escape from guardianship. Formerly, this practice was resorted



to for making a testament. For at that time, with the exception of certain persons, women had not the right of making a testament unless they had gone through the fictitious purchase and had been again formally sold and afterwards released from power. Under Hadrian the Senate dispensed with the necessity of the fictitious purchase. No matter what has been the reason that has brought the wife under the marital power of her husband, it is settled that her rights which then commence are those of a daughter. *G. i.*, §§ 108-115 B; *J. i.*, *xi*. Women may be sold by their fictitious purchasers by the same formal process used in the case of children when sold by their ascendant. *G. i.*, § 118; *J. i.*, *xi*. If it be asked in what consists the difference between the fictitious purchase of a woman, and the process of formal sale, it is that she who goes through the forms of the fictitious purchase, is not reduced into a servile condition. *G. i.*, § 123; *J. i.*, *xi*.

#### FRENCH :

165. Marriages shall be celebrated publicly in the presence of civil officer of domicil of one of the two parties.

213. A husband owes protection to his wife ; a wife, obedience to her husband. 214. A wife is bound to live with her husband and to follow him wherever he deems proper to reside. The husband is bound to receive her, and to supply her with whatever is necessary for the wants of life, according to his means and condition. 212. Husband and wife owe each other fidelity, support, and assistance.

#### PEOPLE OF UNITED STATES :

All marriages procured by force or fraud void. § 23.

Celebration either before a clergyman or with participation of some civil officer required ; but unless local statute positively directs that marriage without such formal ceremony be held void, informal marriage (common-law marriage) valid. § 29.

Husband has right to fix matrimonial domicile where he pleases. § 37. Any contract which husband may make before marriage not to take wife away from neighbourhood of her parents void. Strong disposition to reduce this marital right of fixing domicile, particularly when wife has the fortune which supports family. § 38. An alien woman marrying a citizen of the United States becomes a citizen also. § 39. A wife goes by her husband's



surname ; but proceedings under assumed name of a married woman have been upheld. § 40.

Force to compel submission of a wife so as to injure her health or threaten disease is legal cruelty. Husband has not the right of physical constraint. § 45. Husband and wife may be indicted for assault and battery upon each other. § 48. A husband may sue for damages all persons who seek to entice his wife away or induce her to live apart from him. § 41. In some States a wife has same right. § 41 N. 1. Wife is husband's representative or executive officer in the household. Expected to conform to his habits and tastes, even to his eccentricities, provided her health be not seriously endangered ; but whether he can obtain redress, if she rebels against oppressive discipline, extremely doubtful. § 46. Wife's duty to love, honour, and obey ; husband's to love, cherish, and protect. He is head of the house, and if wife's wishes and interests clash with his, she must yield. § 35 N. 2.

In general, husband may be charged with wife's necessities. § 71. Inability of a husband to support wife is not a ground for divorce. § 42.

## LECTURE X

### ECONOMIC RELATIONS BETWEEN HUSBAND AND WIFE

Division of labour  
between husband  
and wife

ACCORDING to economic conditions, the husband is hunter, fisherman, herdsman, tiller of the soil, trader, and, in predominantly industrial societies, the chief or only wage- or salary-earner of the family. The wife digs roots, gathers berries, seeds, fruits, and shell-fish, carries burdens, rows her husband's canoe or boat, cares for his nets and traps and weapons, dresses skins, works in the garden and field, looks after the domestic animals, prepares food and clothes and domestic vessels, and provides, in general, for the economic needs of the household. In migratory groups, carrying, in the absence of beasts of burden, naturally falls to the women, for the men must be free to hunt for, or protect against animal or human aggressors, the women and children. In pastoral communities, herding, which has developed from hunting, naturally falls to the men, although the women may in some cases milk and drive the cows to pasture. In the primitive forms of nomadic agriculture which develop out of seed and plant collecting, and which are found among hunting or herding peoples, all the work of cultivation, except the clearing of the ground, is generally done by the women. Under the wage-earning system, the wife may also supplement her husband's wages or under special conditions be the sole wage-earner of the family.

In polygyny, particularly in concubinage, there is commonly a division of labour or of functions among the wives. Sometimes the younger or more pleasing serve for the sexual gratification of their husbands or for child-bearing,<sup>1</sup> while the older who are past child-bearing become the house or field drudges. Some times, on the other hand, the first or older wife may have the supervision of the younger and subordinate wives. When each wife has a separate home, a division of labour is naturally to a great extent precluded.

Division of labour  
or functions in  
polygyny

The division of a society into highly differentiated economic classes brings with it the exemption of the wives (and children) of the higher economic classes from productive labour. Slavery and the wage-system become substitutes for polygyny in its utilitarian aspects. The type of concubinage to which we have just referred, in which the concubines are markedly inferior, and economically subordinate, to the wife is an early example of this substitution. The custom of the bride giving the slave-girl whom she has received from her parents as a dowry to her husband as a concubine is particularly interesting in this connection. Likewise the fact that it is not unusual for a wife to urge her husband to take another wife or a concubine in order to lighten her own labour. When in the development of a leisure class leisurely occupations or non-productive activities become badges of respectability, abstaining from productive labour may even become obligatory upon wives as expressing the

Slavery, the  
wage-system, and  
polygyny

Slave-girl dowry

Obligatory absten-  
tion from produc-  
tion by leisure-class  
wife

<sup>1</sup> If these women are permanently differentiated into child-bearers and non-child-bearers, as in the case of the Greek *hetaira* and the modern *demi-mondaine*, the latter class are not of course in a marriage relation at all.

Effect upon wives  
of inferior economic  
classes

superior economic position held in the community by their husbands. A change of habit on the part of the wives of the superior economic class effects a corresponding, although necessarily slighter, change in the lives of the wives of inferior economic classes.

Effect of marital  
ownership on pro-  
perty rights of  
women. The wife  
is herself a form of  
property

Marital ownership more or less precludes the independent holding or inheriting of property by wives. The wife is herself a form of property. She may be killed, loaned, exchanged, sold, or foreclosed for debt by her husband-owner. (As in the case of offspring, the right to sell or whip her becomes modified to the right to do so only as a punishment for misbehaviour.) If a man commit adultery with another's wife, his own wife may even be violated as an equivalent for

Disposal of widows

his own encroachment. As a form of property a wife may be immolated at the death of her husband (actual or affianced),<sup>1</sup> or inherited by his relatives, by his sons, brothers, clansmen, etc. Sexual privileges do not always accompany widow-inheritance, and the inheritance may be chiefly in the nature of an obligation to support and protect the widow. It may also consist of the right to marry off the widow and receive the bride-price which she may bring. Widows may also be forbidden to marry during arbitrarily determined periods lasting from a few weeks to a lifetime. This prescription may of course be due in some instances to corpse taboo or to a desire to preclude uncertainty about paternity as well as to proprietary ideas about the widow.

Female ownership  
and inheritance of  
feminine goods

There are cases where, despite well-defined marital ownership, wives have a right to the possession of distinctly feminine goods, clothes, household imple-

<sup>1</sup> Frequently this custom is confined in a group to the royal or chiefly class.

ments, etc. Such property is commonly inherited from mother to daughter. Again, the existence of a dowry commonly entitles the wife to certain property rights. The dowry may be her separate property subject only to her administration. More frequently, however, the husband has the right of administration and usufruct over dotal property. At death or separation the dowry usually reverts to the wife or her relatives. Other kinds of property besides dowry may also be considered the separate property of the wife. Again, her property rights may be entirely unaffected by her marriage, the property that she has acquired both before and after marriage being separate and independent of her husband's control.

Dotal property

Marital administration and usufruct

Property entirely separate

Besides the various individual property customs referred to, there is also a widespread communal system for matrimonial property. In the communal system, all matrimonial property is a joint possession. The principle of community may be general or it may apply only to the property acquired after marriage. Again, certain kinds of property may be excluded from the community—movable property, property exclusively for personal use, ante-nuptial debts, and dotal property (the profit and proceeds of such property belong to the community), donations or successions, etc. The husband administers the property of the community. His power may be limited, however, in certain cases. The consent of the wife may be necessary to the alienation of the common property, or she herself may be given a limited right of administration. With certain exceptions, the common property is liable for the obligations of

Community

Limited community

Marital administration of the community



each of the married persons. In view, however, of the wife's exclusion in general from the administration of the common property, she is, as a rule, not held personally liable for obligations incurred in its administration.

**Mixed systems**

Individual and communal systems may be combined, as when certain classes of property are excluded as we have seen, from the community. Again, property owned before marriage may be accounted separate, and that acquired after marriage, communal.

**Right to wife's services or earnings**

The right to a wife's services or earnings is more or less closely connected with prevailing ideas about her property rights in general. Where she has no separate property, her earnings usually fall to her husband or to the community, although, as we shall see later in transitional systems, her right to her own product may be more or less protected. Under marriage by purchase, a wife's labour is sometimes thought of as a form of redemption of the bride-price, and after an equivalent has been earned by her she may become economically independent of her husband. On the other hand, the custom also exists of freeing a bride of work of any kind for a stated period.

**Inheritance of matrimonial property**

Rules of succession in matrimonial property are naturally dependent upon the property relations of married persons during their lifetime. Where the chattel character attaches to women, widows are inherited, as has been stated, by the deceased husband's male relatives, most commonly by his brothers. Marriage with her brother-in-law may even be considered a due to the widow herself. Where a period of widowhood is required or expected out of respect for the deceased, the propertyless widow has com-

**Widow's claim for support**

monly a claim for support for varying periods upon her husband's estate or upon the relatives inheriting it, sons, father, brothers, etc. Widows who return, as happens in many groups, to their fathers' home, are precluded, of course, from these provisions. Dowry is frequently understood as a provision for the woman in case of widowhood (or divorce). Dotal property, as we have seen, is usually administered by the husband during his lifetime; but at his death it may become the separate property of the widow or it may revert with her to her family. The right to it may also be inherited, together with the right to her person, by the heirs of her deceased husband. Under the system of marital administration and usufruct, the widow generally regains possession of what other kinds of property she may have acquired. She may also succeed to the whole (in the absence of offspring) or only a part of her deceased husband's property. In the latter case the part to which she is entitled may be agreed upon between the parties at her marriage or it may be established by custom or law. It may consist of certain kinds of property or be a fixed proportion of the estate of the deceased. In these cases, the widow may come into absolute ownership or may only have the usufruct of the property during her lifetime or until her re-marriage.

In the case of the death of the wife, the husband may inherit all or a part of her property, or he may have the usufruct of all or a part of it during his lifetime only, or all or a part of it may be inherited by her kinsfolk or children.

These rules may apply only to intestate succession

Dowry a provision for widowhood

Possession of separate property regained

Inheritance of husband's property

Marriage settlements; legal portion

Disposition of property of deceased wife

Intestate succession and testamentary disposition

or they may be binding upon testamentary disposition (legal portion, dower, etc.) as well.

Existence of  
offspring and near  
relatives

The existence of offspring or of near relatives commonly affects the proportion of the matrimonial property inherited by the survivor. It may also determine whether or not the property is to be held in usufruct or in ownership.

Dissolution and  
continuation of  
community

Where matrimonial property is held in community, the community may be continued at the death of either married person, the offspring representing the deceased, or the community may be dissolved, the survivor regaining possession of his or her share. The survivor may or may not have the usufruct of the remaining share during his or her lifetime.

Position of women  
in juridical system

Closely related to the economic position of women is their position in the administration of justice and in the government. Where their economic subordination is pronounced, they are, as a rule, not allowed to act as principals or witnesses in courts of justice, or allowed to appear only under special circumstances. Their evidence may be valued as only a fraction of that of a man's. Composition for their murder or for injuries received by them may be less than that of men under like circumstances. Frequently husbands are responsible for their wives' debts or fines. Wives may also have to share in the punishments meted out to their husbands. Their capacity to enter into contracts is in general limited by their economic dependence.

Exclusion of women  
from government

Women are commonly excluded from any share in government. Sometimes the older women are given a voice in the tribal council or are allowed to attend its meetings without a voice; but except where ruler-

ship is hereditary, cases of gynocracy (government by women) are rare. In modern civilisations, minor government positions are sometimes held by women, and in some localities women have a limited, or even in some cases unlimited, suffrage.

Gynocracy

Modern female suffrage

The position held by wives has generally and to a great extent a bearing upon that held by mothers, and *vice versa*. In concubinage, for example, the children of an inferior are often imputed to the superior wife, and the natural mother may not be respected by her children. The subordination of the wife is not infrequently followed by that of the mother, on the decease of the father, to her adult sons. Again, where wives are excluded from the occupations of their husbands (and in almost all societies, as we have seen, there is a marked segregation of the sexes), sons are separated from their mothers at an early age. The custom even exists of forbidding adult sons to approach their mothers. We have already seen that wives who have borne children may outrank childless wives, or may not be repudiated by their husbands. Similarly, slave-concubines who are the mothers of their master's children may not, in some cases, be sold by their master, and at the latter's death they may be accounted free, or they may even become free as soon as they have given birth to a child. All classes of widows with children are, as a rule, more independent than childless widows. Facts about the desirability of offspring should always be noted in a study of the status of mother and wife.

Relation between status of wife and status of mother

In the following lecture we shall consider facts about the relationship of offspring to both parents based on the reckoning of descent.



## NOTE A

## SLAVERY A SUBSTITUTE FOR WIFE LABOR.

Niebohr, *Slavery as an Industrial System*, pp. 391-396.

## THE WIFE A CHATTEL.

Wilutzky, *Vorgeschichte des Rechts*, i., 216-241.

## THE ECONOMIC VALUE OF THE LEISURE-CLASS WIFE.

Veblen, *The Theory of the Leisure Class*, New York and London, 1899, chap. iv.

## PROPERTY HOLDING IN MARRIAGE.

Post, *Familienrechts*, pp. 291-315.

## SYSTEMS OF INDIVIDUAL MATRIMONIAL PROPERTY.

Loeb, *The Legal Property Relations of Married Parties*, New York, 1900, pp. 95-153.

## SYSTEMS OF COMMUNITY OF MATRIMONIAL PROPERTY.

Loeb, *Ibid.*, pp. 63-91.

## NOTE B

## FACTORS INFLUENCING THE STATUS OF WIVES.

Marital power is greater where descent is patronymic than where it is matronymic. Steinmetz, *Ethnologische Studien*, etc., ii., chap. vii.

Where woman is important as a food provider her general social position is improved. Grosse, *Die Formen der Familie und die Formen der Wirthschaft*, p. 243.

Agricultural habits have a favourable effect upon position of the women cultivators of the soil. Likewise women's dangerous supernatural powers and children's affection for their mother. Westermarck, *Women in Early Civilisation*, in *The American Journal of Sociology*, Nov., 1904, pp. 419-421.

Wives' subjection due to men's instinctive desire to exert power and to natural inferiority of women in qualities of body and mind essential to personal independence. In the sexual impulse itself are elements leading to male domination and female submission. The exclusion of women from cultural activities, and the strengthening of the patriarchy on the dissolution of the clan also factors of subjection.



Westermarck, *The Origin and Development of the Moral Ideas*, pp. 657-669.

## NOTE C

Study the division of functions among wives in polygyny (concubinage). Make a comparative study: (1) of economic position and (a) juristic, (b) political disabilities of women, (2) in a certain number of groups, of rights of daughters, wives, and mothers in order to determine the relations between paternal and marital power and between status of wife and of mother, (3) of desirability of offspring and status of wife.

## NOTE D

## YAHGAN:

Hunting practised exclusively by men and fishing by women. x., 336. Only the men build the huts of tree trunks and branches. x., 337. Fishing, preparation of foods, and management in general of the boats carried on by the women. x., 332.

Surviving husband or wife inherits. x., 334. After father's death mother has right to dispose of daughter. vii., 172.

## CENTRAL AUSTRALIANS:

If there be no lack of food, men and women all lounge about while children laugh and play. If food be required, then women will go out accompanied by children and armed with digging sticks and *pitchis*, and the day will be spent out in the bush in search of small burrowing animals, such as lizards and small marsupials. Men will perhaps set off armed with spears, spear-throwers, boomerangs, and shields in search of larger game, such as emus and kangaroos. p. 19. Women are certainly not treated usually with anything which could be called excessive harshness. They have to do a considerable part, but by no means all, of the work in camp, but after all in a good season this does not amount to very much, and in a bad season men and women suffer alike, and of what food there is they get their share. p. 50.

## POINT BARROW ESKIMO:

A woman sews, prepares skins for making and mending, cooks, and cares in general for provisions. Occasionally sent out on the

ice for a seal which her husband has taken. In spring and summer takes her place in the boat if required. p. 414.

A woman's property, consisting of beads and other ornaments, needle case, knife, etc., is considered her own. p. 414.

A widow has no share in her husband's property; she takes only what she has brought with her. p. 414.

#### BEHRING STRAIT ESKIMO :

Sons inherit hunting implements; wife and daughters, ornaments and household articles. p. 307.

#### CENTRAL ESKIMO :

A man must provide for his family by hunting, *i.e.*, for his wife and children and for his relatives who have no provider. He must drive the sledge in travelling, feed the dogs, build the house, and make and keep in order his hunting implements, the boat covers and seal floats excepted. The woman has to do household work, sewing, and cooking. Must look after lamps, make and mend tent and boat covers, prepare skins, bring up young dogs, make the inner outfit of the hut, smooth the platforms, line the snow houses, etc., and do the rowing in the large boats while the men steer. pp. 579-580. In travelling by sledge, men drive the dogs and women lead the way. p. 575.

#### MELANESIANS :

The widows of a man's maternal uncles, brothers, cousins, tend to accumulate around him. Called his wives, live in houses around him, work for him, but he practically lives with two or three younger women whom he has taken for himself. p. 245. Lepers' Isl.: If a distant cousin of deceased husband wishes to have the widow, he adds a pig to the death feast of the tenth or fiftieth day. If two kinsmen contend for a widow, she selects one, who gives a pig to the other. p. 244.

Lepers' Isl.: Women do not succeed to land, but have a right to a share in produce of father's garden, which their brothers are considered to hold partly for them. Banks' Isls.: Daughters inherit land of right equally with sons, but in fact they rather transmit inheritance to their children. pp. 67, 64 footnote.

## EWE-SPEAKING PEOPLES :

Wives inherited by a man's heir. pp. 205-206. In Dahomi a number of king's wives killed or kill themselves at his death. pp. 124, 127, 128.

Each wife has her separate dwelling in enclosure where her husband's house stands. Wife's property separate from husband's. Woman's dowry slave girls live with her. The children of a concubinous union of these slaves and her husband belong to her. p. 205. [Condition of a concubine is but little inferior to that of third, fourth, and later wives.]

If a concubine bear a child, she cannot be sold. pp. 204, 205.

## TSHI-SPEAKING PEOPLES :

Instance in 1873 of a chief called upon to share in defraying expenses of a disastrous war, selling his wife. p. 272.

Favourite wives of chiefs killed at his death to attend him beyond the grave. pp. 158, 159, 162, 166. Usually widows remain in the house watching the grave for some weeks, neglecting their persons and fasting. Some months after death widow sacrifices to family god, and considered extremely unfortunate for her to have sexual intercourse before performing this rite. The man is believed to inevitably fall a victim to the wrath of deceased husband. pp. 238-242.

## YORUBA-SPEAKING PEOPLES :

Customary when a chief dies for two of his wives to commit suicide, or, if no volunteers appear, for two to be put to death. In 1859, 42 wives of deceased King of Oyo poisoned themselves in order to accompany him to Dead-Land. pp. 105, 104. Wives and concubines inherited by a man's sons. At present head-wife usually goes to live with husband's relations. Should she marry any one but a brother-in-law, second husband would have to pay to relatives of first original bride-price. pp. 185-186.

Each wife has her house in the husband's compound ; each her own slaves and dependants. p. 182. Wife's property independent of husband's. p. 177.

A man is responsible for his wife's debts. p. 190.

## THOMPSON RIVER INDIANS :

Married women had to do almost all housework. Some men helped their wives in tanning of buckskin, putting up of lodges,

etc., and often manufactured articles for them, such as root-diggers, etc. Considered woman's duty to gather and carry all firewood ; erect lodges, keep them clean inside and light the fire ; gather and carry brush for beds ; make all kinds of mats, baskets, sacks and bags, as well as all clothing, including moccasins ; wash and cook ; dig and cure or cook roots and gather and cure berries ; help to clean and dry fish, to carry meat or game shot, and to look after the horses ; dress all skins for clothing, etc. ; fetch water. pp. 295-296. Considered man's duty to hunt, to trap, to fish, to snare, to fight, to make all tools and weapons, to fell trees, to help look after hunting dogs, to be energetic. p. 295.

A widow became the property of a deceased husband's nearest male kin, generally of brother next in seniority. Right of a man to widow of his deceased brother incontestable, and widow had equal right to demand from him privileges of a husband, and he was bound to support her children. If a man took to wife the sister-in-law of a man without his consent, generally killed, often woman too, by wronged individual. p. 325. Sometimes a widow wore a breech-cloth made of dry bunch grass for several days that ghost of husband should not have connection with her. p. 333.

A woman's effects looked upon as distinct from husband's. A man and his wife often made gifts of their individual property to each other. p. 293. If a couple separated, wife took all her property with her, even roots and berries she had gathered. p. 293.

Widow or female children inherited all kettles, baskets, cooking utensils, and some blankets and robes. Males always inherited canoes and all fishing, hunting, and trapping utensils. Those dogs of the deceased that were not killed became property of male children. Horses divided among all the children both male and female ; former, however, taking twice as many as latter, or at least having first choice. Daughters supposed by some to inherit a deceased father's horses in preference to all male relatives, excepting their brothers. p. 294.

When a captive woman bore children to her master she was considered one of the tribe, and neither she nor her children ever afterward called slaves, at least openly. p. 290. If a widow had children, she inherited lodge of her deceased husband, and it belonged to her and her children. p. 294.



## KABYLES :

Aït Ali ou Illoul. Men who exchange their wives each pay 10 reals fine and bargain is void. iii., 427. Akbil, etc. If a husband whose wife has gone to her parents without his permission sells her to another husband, fined 20 reals. iii., 365.

Father generally stipulates for a gift of clothes and jewelry from groom to bride. He may give these things himself to bride. These gifts, *çedak*, sometimes become property of woman. Sometimes she may not dispose of them, but at her death they go to her husband or are returned to her family. Her relatives sometimes even have right to take them back in her lifetime. ii., 162-163. Aït Fraouçen. A woman may take nothing with her to her husband's house except what her relatives have given her. She may not bequeath this dowry at death. It returns to her relatives. She may bequeath only her clothes. iii., 389. Aït Bou Chenacha. He who in marrying his daughter or sister gives her jewels which she carries with her to her husband's house may take them back whenever he please, unless he have relinquished his claim to them before witnesses. iii., 353. Aït Izerfaoen, etc. A woman has no claim to any part of the *thâmamth*. Her husband gives her what he pleases in garments. A widow may remain in house of her deceased husband if she marry one of his near relatives. She may not remain if she marry a stranger. If a widow have only daughters, village council divides property of deceased in two parts, one for support of widow and daughters, one for heirs. When widow's daughters marry she receives a third of the *thâmamth*, father's heirs two-thirds. iii., 410. Aït Khalifa. A married woman may not claim *thâmamth* from those who have given her in marriage. She may not appoint a person to receive *thâmamth*. It is always her near relatives. iii., 401. Aït Iraten. If there is no male relative in second degree, and girl's mother is living, *thâmamth* divided into three parts, two go to nearest agnate, and third divided between girl and mother. If mother has died or remarried, the third goes entirely to girl. If there is no male relative it is divided between the two women, and if the mother has died or remarried, girl receives whole. ii., 155. Cheurf, etc. An unmarried woman may leave her property to her relatives; a married woman may not; her husband disposes of it. iii., 329. If relative or representative of a



widow wishes to marry her and she refuses, he has a right only to 20 reals, to be levied on property of her orphaned child. If a widow marry a relative of her husband and he fail to make her happy, she has the right to go and live with her son by her first husband. iii., 342. A widow with sons cannot be ejected from house of deceased husband ; but she should do nothing without consulting his relatives. iii., 390. Akbil, etc. A widow is entitled to carry away with her linen and cotton garments, the earrings, head ornaments, and jewels given her by her husband, and what she has received from her parents. Anyone attempting to deprive her of these things is fined 5 reals. A man's widow, daughters, sisters, are entitled to live in house of deceased and to enjoy during their lifetime a third of his property. If they can manage it themselves they are free to do so ; if not, they are to choose themselves the relatives who are to manage it for them. iii., 336. Iouadhien. A widow has the right to remain in house of deceased husband. Anyone ejecting her to be fined 20 reals. Anyone who buys anything from a widow with young children who cannot make a bargain without consent of their near relatives, will not receive back what he has paid when his purchase has been taken away from him, unless the near relatives have consented to sale. If near relative of deceased husband fail to provide for needs of his widow, she is to complain to village council. iii., 342. Aït Aïssa. When a woman is widowed or divorced, she returns to her father or his heirs and is supported by them. iii., 405. A man may bequeath to a wife, daughter, sister, aunt, a life interest in his property equal to that to which a woman is entitled, according to Moslem law. He may not exceed that amount. A woman may dispose of income of property so inherited as she wish, but she may not sell the capital. iii., 379. Aït Ousammer. He who proposes to give a woman a share in the inheritance, fined 50 reals. iii., 378.

Cheurfa, etc. If a woman accidentally set fire to a house, her husband must pay damages, unless he divorce her. iii., 438. If a married woman living with her husband is fined, husband pays. If she live with her parents, they pay. iii., 368. Confederation of Aït R'Oubri. A woman can neither buy nor sell ; one of her near relatives, or if she has none, wisest man in the *khrouba*, must always act for her. iii., 415. Aït Ameur, etc. If a woman

buys something with her own money, no one may take it away from her. iii., 394.

#### ANCIENT ARABS :

Those of you who die and leave wives, should bequeath to them maintenance for a year, without expulsion from their home ; but if they go out, there is no crime in you for what they do of themselves, in reason. ii., 241-242.

And ye shall have half of what your wives leave, if they have no son ; but if they have a son, then a fourth of what they leave, after payment of bequests or of debts. And they shall have a fourth of what ye leave, if ye have no son, but if ye have a son, then let them have an eighth of what ye leave, after payment of bequests and of debts. iv., 14. If a man perish and have no child, but have a sister, let her have half of what he leaves ; and he shall be her heir, if she have no son. But if there be two sisters, let them both have two-thirds of what he leaves ; and if there be brethren, both men and women, let the male have the like portion of two females. God makes this manifest to you lest ye err ; for God all things doth know. iv., 176.; also iv., 15. Women should have a portion of what their parents and kindred leave, whether it be little or much, a determined portion. God instructs you concerning your children ; for a male the like of the portion of two females, and if there be women above two, then let them have two-thirds of what the deceased leaves ; and if there be but one, then let her have a half ; and as to the parents, to each of them a sixth of what he leaves, if he have a son ; but if he have no son, and his parents inherit, then let his mother have a third, and if he have brethren, let his mother have a sixth after payment of the bequest he bequeaths and of his debt. iv., 11-12.

#### ANCIENT HEBREWS :

When a man hath taken a new wife he shall not go out to war, neither shall he be charged with any business : but he shall be free at home one year, and shall cheer up his wife which he hath taken. Deut. xxiv., 5. Naomi, widow of Elimelech, inherited his land. His sons had died, but he left male kinsmen. Naomi also came into her son's lands. Ruth iv., 3, 9.

## BABYLONIANS :

If a woman, who dwells in the house of a man, make a contract with her husband that a creditor of his may not hold her (for his debts) and compel him to deliver a written agreement ; if that man were in debt before he took that woman, his creditor may not hold his wife, and if that woman were in debt before she entered into the house of the man, her creditor may not hold her husband. § 151. If they contract a debt after the woman has entered into the house of the man, both of them shall be answerable to the merchant. § 152.

If an officer or a constable, who is in a fortress of the king, be captured (and) his son be able to conduct the business, they shall give to him the field and garden and he shall conduct the business of his father. § 28. If his son be too young, they shall give one-third of the field and of the garden, to his mother, and his mother shall rear him. § 29. He may deed to his wife or daughter the field, garden, or house which he has purchased and (hence) possesses, or he may assign them for debt. § 39.

If a man give to his wife field, garden, house, or goods and he deliver to her a sealed deed, after (the death of) her husband, her children cannot make claim against her. The mother after (death) may will to her child whom she loves, but to a brother she may not. § 150. The wife shall receive her dowry and the gift which her husband gave and deeded to her on a tablet and she may dwell in the house of her husband and enjoy (the property) as long as she lives. She cannot sell it, however, for after her (death) it belongs to her children. § 171. If her husband have not given her a gift, they shall make good her dowry and she shall receive from the goods of her husband's house a portion corresponding to that of a son. If her children scheme to drive her out of the house, the judges shall inquire into her antecedents, and if the children be in the wrong, she shall not go out from her husband's house. If she set her face to go out, she shall leave to her children the gift which her husband gave her ; she shall receive the dowry of her father's house, and the husband of her choice may take her. § 172. If she bear children to her later husband and later on she die, the former and the later children shall divide her dowry. § 173. If she do not bear children to her later husband, the children of the first husband shall receive her

dowry. § 174. If a man take a wife and she bear him children and that woman die, her father may not lay claim to her dowry. Her dowry belongs to her children. § 162. And if a slave of the palace or of a freeman take the daughter of a man (gentleman), and if she enter into the house of the slave with the dowry of her father's house ; if from the time that they join hands, they build a house and acquire property ; and if later on the slave die, the daughter of the man shall receive her dowry, and they shall divide into two parts whatever her husband and she had acquired from the time they had joined hands; the owner of the slave shall receive one-half and the daughter of the man shall receive one-half for her children. § 176. If she had no dowry, they shall divide into two parts whatever her husband and she had acquired from the time they joined hands. The owner of the slave shall receive one-half and the daughter of the man shall receive one-half for her children. § 176A. If a widow, whose children are minors, set her face to enter another house, she cannot do so without the consent of the judges. When she enters another house, the judges shall inquire into the estate of her former husband, and they shall intrust the estate of her former husband to the later husband and that woman, and they shall deliver to them a tablet (to sign). They shall administer the estate and rear the minors. They may not sell the household goods. He who purchases household goods belonging to the sons of a widow shall forfeit his money. The goods shall revert to their owner. § 177.

#### ANCIENT HINDUS :

Let the husband employ his wife in the collection and expenditure of his wealth, in keeping everything clean, in the fulfilment of religious duties, in the preparation of his food, and in looking after the household utensils. By these expedients she may be guarded when she cannot be completely so by force. ix., 10, 11. A husband who has business abroad may depart after securing a maintenance for his wife ; for a wife, even though virtuous, may be corrupted if she be distressed by want of subsistence. If the husband depart without providing for her she may subsist by blameless manual work. ix., 74, 75.

A wife, a son, and a slave, these three are declared to have no property ; the wealth which they earn is acquired for him to whom they belong. viii., 416.



Selling one's wife a minor offence, causing loss of caste. xi., 62, 67.

A second husband is never prescribed for virtuous women. They must never even mention the name of another man after husband's death. v., 167.

Whatever may be the separate property of the mother, that is the share of the unmarried daughter alone. ix., 131. All the uterine brothers and sisters shall equally divide the mother's estate, even if mother die in husband's lifetime. Even to the daughters something of this estate should be given on the score of affection. ix., 192-193, 195. See ix., 198.

What was given before the nuptial fire, on the bridal procession, in token of love, and what was received from her brother, mother, or father is called the sixfold property of a woman. Such property, as well as subsequent gift and what was given her by her affectionate husband, is inherited directly by her children. The property of a woman married according to Brâhma, Daiva, Ârsha, Gândharva, Prâgâpatya rites shall go to her husband alone if she die without issue; that of a woman married according to Âsura or one of the other blamable marriages shall go to her mother and father. Wives should never make a hoard from their husband's particular property without permission. ix., 194-199.

Let not a man eat in the company of his wife, nor look at her while she eats, sneezes, yawns, or sits at her ease. iv., 43.

Male relations who in their folly live on the separate property of women, beasts of burden, carriages, and clothes, commit sin and will sink into hell. iii., 52.

#### ANCIENT CHINESE:

In presenting a daughter for the harem of the son of Heaven it is said: "This is to complete the providers of sons for you"; for that of the ruler of a state: "This is to complete the providers of your spirits and sauces"; for that of a great officer: "This is to complete the number of those who sprinkle and sweep for you." xxvii., 119. The son of Heaven and the princes of the states guided the plough to provide grain for the sacrificial vessels, and their wives looked after their silkworms to provide the cap and robes of silk. This was not because the



son of Heaven and the princes had not men to plough for them, or because the queen and the princes' wives had not women to tend the silkworms for them; it was to give the exhibition of their personal sincerity. xxviii., 239. The wife was the fitting partner of her husband, and could carry on all the work in silk and linen, making cloth and silken fabrics, and maintaining a watchful care over the various stores and depositories of the household. xxviii., 431.

Khan Kan-hsi charged his son to bury his two concubines with him, one on each side. When he died, his son said: "To bury the living with the dead is contrary to propriety; how much more must it be to bury them in the same coffin." Accordingly, he did not put the two ladies to death. xxvii., 183, 184.

When the mother of Zze-lin died, his younger brother Zze-shih asked for the means to provide what was necessary for the mourning rites. Zze-lin said: "How shall we get them?" "Let us sell the concubines, the mothers of our half-brothers," said the other. "How can we sell the mothers of other men to bury our mother?" was the reply; "that can not be done." xxvii., 145. When the concubine of an officer had a son, he wore the three months' mourning for her. If she had no son, he did not do so. xxviii., 47. The son of an inferior member of the harem can not offer the sacrifice to his grandfather or father; if, for some reason, he have to do so, he must report it to the honoured son, the head of the family. xxvii., 117. If parents have a boy born to the father by a handmaid, or the son or grandson of one of his concubines of whom they are very fond, their sons should, after their death, not allow their regard for him to decay so long as they live. xxvii., 457.

#### ANCIENT ROMANS:

Property is acquired for us by those in our power, descendants, slaves, or as being in our marital power. *G. ii.*, § 86.

The husband forbidden to alienate dowry immovables without wife's consent, although they belong to him, whether as a result of a formal conveyance by copper and scale, grounded on the dowry, or surrendered in court, or acquired by use through the statutory period of possession. *G. ii.*, § 63. Alienation is forbidden even with wife's consent, "Lest the weakness of the

female sex should be turned to the detriment of her fortune." *J. ii., viii.*

A wife under marital power inherits because she occupies the place of a daughter. *G. iii., § 3.* According to Twelve Tables all agnates whether male or female inherited in their turn. Subsequently only females related by consanguinity *i. e.*, sisters inherited. "It seemed expedient that inheritances should tend for the most part to get into the hands of males." Under Justinian former provision re-enacted. *J. iii., ii., § 2.*

Unlike husband, a wife cannot bring an action for outrage committed on husband, "for it is just that wives should be protected by their husbands, but not husbands by their wives." *J. iv., iv., § 2*

#### FRENCH :

228. A wife cannot contract a second marriage until ten months have elapsed since the dissolution of the previous marriage.

1387. The law only regulates conjugal relations with respect to property when there is no special agreement, but husband and wife may enter into any agreement they deem proper, provided it is not contrary to good morals, and, besides, is subject to following restrictions. 1388. A husband and wife cannot derogate from the rights resulting from husband's marital powers over person of wife and of children or which belong to husband as head of family, nor from rights conferred upon survivor of husband or wife under title of *Paternal Authority* and title of *Minority, of Guardianship and of Emancipation*, nor from prohibitory provisions of present Code. 1389. They cannot make any agreement or renunciation of which object would be to change legal order of succession, either with respect to themselves in the succession of their children or descendants or with respect to their children among themselves.

1401. Community is composed : 1. Of all personal property which husband and wife own at time of the celebration of marriage, together with all personal property which comes to them during marriage, either by way of succession or even donation, unless donor has provided differently. 2. Of all profits, revenues, and arrears, of whatever nature they may be, which may have become due or have collected during marriage and coming from

property belonging to husband and wife at time of celebration of marriage, or from property which has come to them during marriage in whatever way it may be. 3. Of all real estate acquired during marriage. 1421. Husband has sole management of community property. He can sell, convey, and mortgage it without the co-operation of wife. 1428. A husband has management of all individual property of wife. He cannot convey his wife's individual real estate without her consent. 1497. Husband and wife may modify legal community. 1. That the community shall only apply to acquests. 2. That the present or future personal property shall not fall into the community or shall only fall into it in part. 3. That all or part of the present or future real estate shall be included. 4. That the husband and wife shall pay individually the debts which they had previous to marriage. 5. That in case of renunciation, wife shall be able to take back property she has contributed, free of all charges. 6. That survivor shall have a preciput. 7. That husband or wife shall have unequal shares. 8. That there shall exist between them a universal community. 1530. Clause providing that husband and wife marry without community does not give wife right to manage her property nor to collect income thereof: such income is supposed to go to husband to settle household expenses. 1536. When husband and wife have stipulated in marriage contract that there would be a separation of property between them, wife retains entire management of her personal property and real estate and free enjoyment of her income. 1537. Husband and wife each contribute to household expenses according to conditions contained in their contract; and if there is none in relation thereto, wife contributes to those expenses to extent of one-third of income. 1538. Wife cannot in any case, nor in consequence of any agreement, convey her real estate without express consent of husband, or in case of his refusal, without being authorised by the Court. Any general consent given to wife to convey her real estate, either by marriage contract or since then, is void. 1540. Dowry is the property which wife brings to husband to bear household expenses.

1541. Everything wife sets apart, or which is given to her by marriage contract, is dotal unless there is an agreement to the contrary. 1549. Husband has the sole management of dotal

property during marriage. However, it may be agreed in marriage contract that wife shall collect annually, for her maintenance and personal wants, a part of her income. 1554. Real estate given as dowry cannot be conveyed or mortgaged during marriage, either by husband or wife, or by both of them jointly, with following exceptions. 1555. Wife may, with consent of husband, or in case of his refusal with authority of the Court, give her dotal property for establishment of children whom she might have of a previous marriage; but if she is only authorised by the Court, she must reserve the enjoyment of such property to her husband. 1556. She may also, with consent of her husband, give her dotal property for establishment of children of the marriage. 1564. If dowry consists in real estate, or in personal property not appraised in the marriage contract, or appraised with a declaration that appraisement does not take away ownership from wife, husband or his heirs may be compelled to return it immediately after dissolution of marriage. 1571. At dissolution of marriage, revenue of dotal real estate divided between husband and wife or their heirs. 1576. Wife has the management and enjoyment of her paraphernal property; but she cannot convey it or appear in court in connection with same without consent of husband, or upon his refusal without the authorisation of Court. 1449. A wife separated, either from bed and board or only as to property, regains independent management of her property. She cannot dispose of her real estate without consent of husband, or without being authorised by Court in case of refusal. 1443. A separation of property can only be sued for in court by wife whose dowry is in danger, and when husband's affairs are in such disorder that there is reason to fear that his property will not be sufficient to answer for wife's rights and claims. All voluntary separations are void. 1448. A wife who has obtained a separation of property must contribute as well to household expenses as to those of the education of children of marriage, in proportion to her means and those of her husband. She shall bear these expenses entirely if husband has nothing left.

215. A wife cannot sue in court without consent of her husband, even if she is a public tradeswoman or if there is no community or she is separated as to property. 216. Husband's consent is not necessary when wife is prosecuted criminally or in a police



matter. 217. A wife, even when there is no community, or when she is separated as to property, cannot give, convey, mortgage, or acquire property, with or without consideration, without husband joining in the instrument, or giving his written consent. 218. If a husband refuses to allow his wife to sue in court, the Judge may grant the authorisation. 219. If a husband refuses to allow his wife to execute an instrument, wife can cause him to be summoned directly before the Tribunal of First Instance of the common domicil, and such Tribunal shall grant or refuse its consent after husband has been heard or has been duly summoned. 221. When a sentence has been passed upon a husband which carries with it a degrading corporal punishment, even if it has been passed by default, a wife, even of full age, cannot, during the continuance of the punishment, sue in court nor bind herself, unless she has been authorised by the Judge, who may in such case grant the consent without the husband having been heard or summoned. 226. A wife can make a will without her husband's consent.

#### PEOPLE OF UNITED STATES :

Wife's obligation to render family services co-extensive with that of husband to support, these services and comfort of her society being legal equivalent of such support. § 43.

Community system exists in the south-western states, but there is a tendency to limit it. American community doctrine is that all property acquired during marriage shall be deemed to belong *prima facie* to community unless proved to be acquired as separate property. Also usually provided by statute that gifts, bequests, etc., shall be separate property. § 7.

Common-law doctrine of legal non-existence of married women came to be superseded in the second quarter of the nineteenth century by the equitable and statutory separate property systems. The equitable doctrine is prior work of English chancery courts. Statutory doctrine founded on married women's acts. Chap. vii. In some of the States presumption is still that in absence of any provision to the contrary that a married woman's property belongs to her husband. 120a. According to married women's codes, wife permitted to hold all property, real and personal, which she had at time of marriage or has acquired thereafter from any person other than husband. § 115. Acts differ in considering



acquisitions from husband as part of wife's separate property. § 118. A married woman may sell, convey, give, bargain, or otherwise dispose of her separate property. Chap. xi. In many of the States wives allowed benefit of their own labour and services when performed on their separate account; there is, however, less favour shown by the courts to the legislative grant of separate earnings than to that of acquisitions to a wife's separate use from other sources; and still less to statutes extending wife's right of acquiring earnings to permission to embark in business on her own account. Idea not favoured of permitting a wife to forsake her home or neglect her household duties without husband's consent for purpose of acquiring earnings for her separate use, especially if husband be still legally bound to support her by his own labour. § 162. In some of the States a wife may not become her husband's partner, nor join her labour and capital to his in same business enterprise. In most of the States, not permitted to form a partnership with third parties exclusive of her husband's interest while she lives with him. "By the wife's business co-partnership with third persons, and particularly with those of the opposite sex apart from her husband, she entangles her separate property disadvantageously, and incurs the risk of personal affiliations, besides, quite perilous to domestic concord and the mutual confidence which marriage demands." § 169.

A wife may in some States be sued like a single woman; but, on the whole, policy still disinclines to permit a personal judgment to be rendered against a married woman, even on what purports to be her personal obligation. § 158. In regard to common-law rule that husband and wife may not be a witness for or against each other, prevailing tendency is to regard domestic confidence or bias of less consequence than the public convenience of ascertaining the truth. § 53. In regard to presumption of wife's coercion by husband in committing crime, prevailing tendency is to hold her responsible unless husband commanded and was near enough to directly exert his marital influence. § 50.

Husband is in many States entitled to administer estate of deceased wife except under circumstances of separation or as otherwise provided by wife's will. §§ 196, 198. In case of intestacy he is in some States the preferred heir of her personal property. § 198.

In some States common-law tenancy by courtesy (husband's right to enjoyment of deceased wife's real estate during his life-time providing a child capable of inheritance is born) is abolished, in others (the majority) it is reserved. §§ 201, 202. Administration may be granted by the Court to widow or to next of kin or to both together. Right of the widow to administer is not absolute like that of widower. § 204. A wife is entitled to a third of her deceased husband's personal property, likewise to a third of his real estate (dower). §§ 205, 213. Wife or husband together with offspring entitled to homestead. § 214.

## LECTURE XI

### THE RECKONING OF DESCENT AND KINSHIP SYSTEMS

Reckoning of descent

DESCENT is reckoned through the mother, through the father, or through both parents. We know positively of only one group<sup>1</sup> in which kinship, *i. e.*, clan kinship, is not reckoned through either parent.

Distinction between matronymy and the matriarchate

Matronymy or membership in the maternal kinship group should be distinguished from the matriarchate or family control by the mother or the maternal kindred. Paternal and marital powers generally exist although more or less restricted under matronymic systems. In many cases the only practical effect of matronymy is an exogamous marriage restriction. Even under a matriarchal organisation, the control of a family is with the woman's kinsmen, her uncles and brothers, rather than with the mother or wife herself.

Between patronymy and the patriarchate

Similarly, patronymy or membership in the paternal kinship group and the patriarchate or family control by the father or paternal kindred are to be distinguished. Descent may be agnatic, with or without the existence of a large degree of paternal power. A highly developed patriarchate never exists without patronymic descent, just as a developed matriarchate never exists without matronymic descent.<sup>2</sup> Matro-

<sup>1</sup> The Arunta of Central Australia.

<sup>2</sup> The student should be particularly cautioned about the use of these or equivalent terms, as there is no agreement in the terminology of writers on the subjects. *Mother-right* (*mutterrecht*) may cover both *matronymy* and *matriarchate* or *matronymy* only. Again *matriarchate* may be taken as equivalent to *matronymy*. Corresponding confusion exists of course among the masculine equivalents.

nymy, however, not uncommonly accompanies an incipient or even fairly well-developed patriarchate. The patriarchate should also be distinguished from very primitive forms of paternal power. The latter is generally characteristic of the family of the most primitive social groups, whereas the former is found only in more or less developed groups possessing a comparatively complex juridical system.

Matronymy and the patriarchate

Distinction between the patriarchate and primitive paternal power

Mixed patronymic and matronymic systems may exist in the same group. It may not be decided until the birth of the child to which kin he shall be accounted, or sons may follow the father and daughters the mother. Mixed forms are also frequently seen in a developing patriarchate.<sup>1</sup> Under a patronymic system illegitimate children or children of slave parents or of a slave parent may follow the mother. But it is an open question whether this is a survival of a matronymic system or merely the outcome of a strict patriarchate.

Mixed systems

Significance of matronymy in slavery or illegitimacy under a patronymic system

Indications of the way in which descent is reckoned are to be found chiefly in inheritance rules and in marriage prohibitions based on consanguinity. Similarly, permitted marriages, such as half-brother and half-sister or cousin-marriages, may point to an actual or outgrown kinship system.

Naming ceremonial is of great significance as expressing prevailing ideas about descent. Notable, too, is the presentation ceremonial, where the new-born child is for the first time seen by kinsfolk. Wide-spread in patriarchal organisation is the *lifting up* ceremony by which the father recognises his offspring.

Under both patronymic and matronymic systems,

Physical and juridical parenthood

<sup>1</sup> Cpp. 297-8.

the physical kinship of both parents is commonly recognised,<sup>1</sup> but it is not identified with what may be called juridical kinship. Juridical parenthood may, on the other hand, be purely fictitious. Striking instances of fictitious parenthood are seen in the customs of reckoning children begotten by a former to a subsequent husband, the imputation of a son begotten by a husband's brother to the living or deceased husband, *i. e.*, the so-called *niyoga* or *levirate*, the imputation of a child by a concubine to a wife, the adoption of the son of the *appointed* daughter, besides many other forms of adoption. Adoption is a common custom among ancestor-worshipping peoples.

Fictitious brother-  
hood  
Milk brotherhood

There are many forms of fictitious brother- or sisterhood, as well as of parenthood. In milk or foster brotherhood the brothers have both been suckled or reared by the same woman or in the same family. A covenant of brotherhood is not uncommonly entered into by adults, and like milk or foster brotherhood it may entail the same obligations upon the covenanters as actual brotherhood.<sup>2</sup>

Adoption of war-  
prisoners or slaves

Where slavery is not developed, the adoption of war-prisoners into the captor's group—household, clan, or tribe—may be accounted the only alternative to killing them. The position of a slave frequently approximates that of an adopted son.

In studying facts of fictitious kinship, the degree to which it is assimilated with blood-kinship should be noted, whether or not, for example, it involves the

<sup>1</sup> There is, however, a great variety of beliefs in regard to the parts played by parents in reproduction. These beliefs are of interest in a study of kinship systems.

<sup>2</sup> See p.164.



same marriage restrictions or privileges, the same rights of inheritance, protection, vengeance, etc. Let us note, too, whether or not it wholly or only partially precludes the ties of blood-kinship which it supersedes. In this connection the covenant or adoption ceremonial is often significant.

There are two distinct types of consanguineous classifications, the classificatory, in which kinship is reckoned between groups of individuals of the same generation, and the descriptive, in which kinship is reckoned between two individuals only and is based on their genealogical position to a common paternal or maternal ancestor.

Classificatory and  
descriptive kinship  
systems

In the classificatory system kindred are never described by a combination of the primary terms. They are arranged in classes. I call my mother and my mother's sisters *mother*, my father and my father's brothers *father*, my brothers and sisters and the children of my mother's sisters and my father's brothers, *brothers* and *sisters*, my own offspring and the offspring of my sisters or brothers, *sons* and *daughters*. It is to be noted that the children of brothers or of sisters are *brothers* and *sisters* to one another, but that the children of a brother and of a sister are thought of as more remotely related cousins. In this system there is no divergence of collateral lines. The collateral lines are merged into the lineal lines. All the descendants of the common ancestor therefore fall within the recognised relationships. Special terms for uncle, aunt, cousin, etc., have sometimes been introduced into classificatory systems.

The classificatory

The descriptive system is so-called because origin-

The descriptive

ally the collateral and some of the lineal kindred were described by a combination of the primary terms, father, mother, brother, sister, *e. g.*, father's father, brother's son, mother's sister, daughter, etc. Subsequently in certain groups special terms were introduced, *e. g.*, grandfather, nephew, cousin, etc. We may note that collateral lines diverge, and kinship in these lines tends to be lost track of. The descriptive system lends itself to numerical computation, and numerical degrees of kinship are in use. The degree of kinship is reckoned in two ways, either by ascending from *ego* to the common ancestor, and descending from the common ancestor to the collateral relative in question, each intervening person being accounted as one degree, *i. e.*,

Methods of reckoning the degree of kinship

Levitical, Roman, and civil-law system

Father's father (grandfather)		
Father	2   3	Father's brother (uncle)
Ego <sup>1</sup>		<sup>4</sup> Father's brother's son (cousin),

my father's brother's son thereby standing to me in the fourth degree; or by descending from the common ancestor to the collateral in question, *e. g.*,

Canon and English common-law system

Father's father (grandfather)		
Father	1   1	Father's brother (uncle)
Ego <sup>2</sup>		<sup>2</sup> Father's brother's son (cousin),

my father's brother's son thereby standing to me in the second degree.

#### NOTE A

DISTINCTIONS BETWEEN TERMS OF KINSHIP AND PARENTAL CONTROL.

Dargun, *Mutterrecht und Vaterrecht*, pp. 1-16.

DEFINITION OF TERMS DESCRIPTIVE OF KINSHIP AND KINSHIP GROUPS.

Grosse, *Die Formen der Familie und die Formen der Wirtschaft*, pp. 9-14.

DESCENT IN THE TOTEM CLAN.

Frazer, *Totemism*, pp. 69-82.

FICTITIOUS KINSHIP.

Post, *Grundriss*, i., 93-111; *Familienrechts*, pp. 25-42.

Kohler, *Studien über die künstliche Verwandschaft in Zt. f. vergleichende Rechts wissenschaft*, v., 415-440.

Krauss, *Sitte und Brauch der Südslaven*, Vienna, 1885, sec. xxix.

LEVIRATE.

Flach, *Les institutions primitives: Levirat in Annales des sciences politiques*, May, 1900.

KINSHIP SYSTEMS.

Morgan, *Systems of Consanguinity and Affinity of the Human Family* in *Smithsonian Contributions to Knowledge*, xvii., 10-70.

Lubbock, *On the Development of Relationships* in *J. A. T.*, i., 1-26.

Post, *Familienrechts*, pp. 6-21.

*Reports of the Cambridge Anthropological Expedition to Torres Straits*, vol. v., sections ii., iii. (classificatory system).

EFFECTS OF KINSHIP SYSTEMS.

Post, *Grundriss*, i., 65-93.

NOTE B

THE ORIGIN OF MATRONYMY.

Due to dubious fatherhood resulting from exogamy and polyandry. McLennan, *Studies*, etc., p. 124; *The Patriarchal Theory*, p. 216.

Uncertainty of fatherhood and certainty of motherhood. Dargun, *Mutterrecht und Vaterrecht*, i., 44-46.

Marriage by capture. Kautsky, *Die Entstehung der Ehe*, etc., p. 267.

Due to the apparently closer physiological relation between mother and child. A convenience in polygyny. In case of

separation infants and even older children follow the mother. Westermarck, *The History of Human Marriage*, pp. 96-113.

Due to uncertainty of fatherhood. A convenient rule in exogamy for determining who are marriageable women in the group. Spencer, *Principles of Sociology*, i., 641.

Due to a desire to preclude marriage with mother's kindred. The father's kindred are known for offspring live in his horde ; but the mother's kindred belong to another horde and are less well-known, particularly if she is not living at the marriage of her children or if the father had many wives simultaneously or successively. Cunow, *Les bases économiques du matriarcat in Le Devenir social*, iv., 53-54.

#### MEANING OF MATRONYMY IN SLAVERY.

The outcome of a strict patriarchy. Marital and consequently paternal power have not been acquired. A slave woman's children therefore belong to her owner. Wilken, *De Verbreiding van het Matriarchat op Sumatra*, pp. 38-53.

A survival of historical matronymy. Failure of the comparatively new patriarchal system to assert itself because of the absence of a purchase price allows the old matronymic system to reassert itself. Dargun, *Mutterrecht und Vaterrecht*, i., 143-154.

#### RELATION BETWEEN MATRONYMY AND THE MATRIARCHATE.

Matronymy due to the matriarchate. Bachofen, *Das Mutterrecht*, p. xxi.

Matriarchate a result of matronymy. Westermarck, *The History of Human Marriage*, pp. 111-112, 540.

Matronymy involves matriarchate. Kautsky, *Die Entstehung der Ehe*, etc., pp. 343-344.

The primitive endogamous mother-group (*Muttergruppe*) based on matronymy an universal stage. The matriarchate develops from it, but is not an universal stage. Hellwald, *Die menschliche Familie*, pp. 151, 203, 239-240.

#### ORDER OF GENESIS OF MATRONYMY AND PATRONYMY.

Matronymy preceded patronymy. McLennan, *Studies*, etc., pp. 88, 123; *The Patriarchal Theory*, p. 216.

Dargun, *Mutterrecht und Vaterrecht*, i., chap. vi.

In Australia, Howitt, *Native Tribes of South-east Australia*, p. 283.

Patronymy preceded matronymy, the latter being originally a means in polygyny of determining the full brother who was to inherit the family guardianship. Starcke, *The Primitive Family*, pp. 26-27.

This sequence not invariable. Bernhöft, *Zur Geschichte des europäischen Familie in Zt. f. vergleichende Rechtswissenschaft*, viii., pp. 401-402.

The systems were independently developed. Kautsky, *Entstehung der Ehe*, pp. 256 ff., 388 ff.

The systems may have been worked out side by side. Although in many cases the paternal clan (*Vatersippe*) has suppressed the maternal clan (*Muttersippe*) the latter is not necessarily always the earlier. Grosse, *Die Formen der Familie*, etc. pp. 61, 165-166.

#### ORIGIN OF PATRONYMY.

In the inconvenience of uterine succession when a transition is made from nomadic hunting to sedentary agricultural life. In encroachments of the local group upon the class and totem groups. In the breaking off of tribal fragments through marriage elopements, expulsion of offenders, hostile invasion, etc. Howitt and Fison, *Mother-right to Father-right* in *J. A. I.*, xii. (1883), 30-42.

Encroachments of the patriarchate, marriage by capture, influence of contact with patronymic societies, migratory life of cattle-breeders. Dargun, *Mutterrecht und Vaterrecht*, i., chap. vi.

Marriage by contract. McLennan, *The Patriarchal Theory*, chap. xiii.

#### ORIGIN OF THE LEVIRATE.

Review of controversies. Starcke, *The Primitive Family*, pp. 141-158.

A custom of substitution analogous to replacing by the wife's family of a wife who dies or turns out ill. Inheritance of widow by brother or near kinsman characteristic of the matriarchate as opposed to the patriarchal custom of inheritance of widows by sons. Tylor, *On a Method*, etc., p. 253.



A special case of the *Niyoga*, due to an intense desire for male issue. Maine, *Early Law and Custom*, London, 1883, p. 106.

Connected with the obligation to provide for a deceased brother's offspring. Spencer, *The Principles of Sociology*, i., 673.

An extension of the *Niyoga*. The owner of a woman is the owner of her children; and a man's brother does for him after his decease what he would have done for him in life. Not a survival of polyandry. Mayne, *A Treatise on Hindu Law and Usage*, Madras, 1900, pp. 82-85.

Possibly a reminiscence of group marriage. Kohler, *Zur Urgeschichte der Ehe* in *Zt. f. vergleichende Rechtswissenschaft*, xii., 321.

A survival of polyandry. McLennan, *The Patriarchal Theory*, pp. 156-160; *The Levirate and Polyandry*, in the *Fortnightly Review*, 1877.

#### MEANING OF CLASSIFICATORY SYSTEM.

Explicable only as originally the result of promiscuous intercourse involving the cohabitation of brothers and sisters as its most common form. Morgan, *Systems of Consanguinity and Affinity of the Human Family*, pp. 143, 469, 474-494.

Based on group marriage. Kohler, *Zur Urgeschichte der Ehe*, p. 306.

Relationships are mere expressions for the results of marriage customs. Lubbock, *On the Development of Relationships* in *J. A. I.*, i., (1872), 26.

A system of mutual salutations merely, but it probably grew up with a system of blood ties. Nair and Thibetan forms of polyandry can explain it. McLennan, *Studies*, etc., pp. 273, 277-278.

Nomenclature expresses juridical relations. Starcke, *The Primitive Family*, p. 207.

A recognition of three generations to hinder sexual relations between relatives in the ascending and descending line. Cunow; *Australneger*, p. 165.

Originally a division according to generation to define sexual rights of older and younger males. Atkinson, *Social Origins and Primal, Law*, pp. 285-286, 292.

Originally a system of pointing out seniority and customary legal status. Crawley, *The Mystic Rose*, p. 476.

The terms of relationship were extended from the individualistic family to larger sets of persons occupying the same customary legal status as actual fathers, sons, sisters, etc., as family groups (parents and offspring) coalesced into tribal societies. Lang, *Social Origins and Primal Law*, p. 103.

Originated in the aim of granting facilities for marriage in derogation of an earlier system according to which legitimate sexual alliance had become difficult. Marriage regulations were based on the relationship of a father to his child, and the idea that gave rise to those regulations also originated the classificatory system. Wake. *The Origin of the Classificatory System of Relationships Used among Primitive Peoples*, in *J. A. I.*, viii., 144-176.

Originates in age groups irrespective of kinship. Contemporaries of father are all called *father*, because the father has not yet received a name to distinguish him from them. The system has nothing to do with marriage customs. Kautsky, *Die Entstehung der Ehe*, etc., pp. 197-198.

#### NOTE C

Analyse descent and kinship terms in use by ethnologists, or compile a dictionary of English, German, and French terms used in description of the family, etc., giving instances of use. Review groups in which matronymy is (1) primarily, (2) exclusively, an exogamous rule; in which mixed matronymic and patronymic systems prevail. Make a comparative study of coexistence of matronymy and (1) primitive paternal control (2) patriarchy, of matronymy and patronymy and (1) naming and *lifting up* ceremonial, (2) presentation ceremonial (3) beliefs about parts played by parents in reproduction, (4) adoption ceremonial. Almost any one of the hypotheses given in Note B might be tested by the comparative method followed by Tylor.

#### NOTE D

##### VEDDAHS :

A son inherits from father right to family hunting-ground and cave, also axe, bow and arrows. p. 490.

## YAHGAN :

Descent in both lines. x., 333. Sometimes family names are passed from one generation to another, from father to eldest son. vii., 170.

Descent recognised to the fourth or fifth degree. x., 334.

## CENTRAL AUSTRALIANS :

Among Arunta, and Arunta typical of large group of tribes inhabiting centre of continent from Lake Eyre to Port Darwin, descent counted in male line. p. 70. Not infrequently two brothers in blood will marry two sisters in blood. The usual plan is for elder brother to marry elder sister ; should, however, elder sister marry younger brother then seniority is counted in male line. In this case sons and daughters of younger daughter are the elder brothers and sisters of those of elder sister. p. 88. A child at birth very often named after place at which mother imagines she conceived it—that is spot at which she first becomes aware that she is *atnūnta*. p. 57 n. 1. A large number of prominent rocks and boulders and certain ancient gum-trees are trees and rocks of spirits. If a woman conceives a child after having been near the gap where these trees and rocks are, it is one of these spirit individuals which has entered her body, and therefore, quite irrespective of what mother's or father's totem may chance to be, that child, when born, must of necessity be (in case cited) of witchetty grub totem. It is, in fact, nothing else but the reincarnation of one of the witchetty grub people of the Alcheringa. p. 124. Idea firmly held that child is not direct result of intercourse, that it may come without this, which merely, as it were, prepares mother for reception and birth of an already formed spirit child, who inhabits one of the local totem centres. p. 265. Among Urabunna descent counted through the mother both as regards class and totem. p. 60.

When a child dies not only does actual *Mia*, or mother, cut herself, but all the sisters of latter, who are also *Mia* to dead child, cut themselves. All women call their own children *Umba*, and apply precisely same term to children of their sisters, blood and tribal. p. 75.

## POINT BARROW ESKIMO :

Women who have several children frequently give away one or

more of them. Custom of adoption universal and adopted treated by parents precisely like their own. Always plenty of families ready and willing to adopt orphans. p. 419.

Cousins spoken of as "one breast," that is, brothers and sisters. p. 419.

#### BEHRING STRAIT ESKIMO :

Exploits of a man or woman's father drawn on grave-box, etc. p. 311. A child given name of last person who died in village or name of a deceased relative who may have lived in another place, thus becoming representative of dead person at Festival of the Dead. p. 289.

Childless Eskimo frequently adopt a child, either girl or boy, preferably latter, so that when they die there will be some one left whose duty it will be to make the customary feast and offerings to their shades at Festival of the Dead. p. 290.

#### CENTRAL ESKIMO :

Adoption carried on to a great extent. If for any reason a man is unable to provide for his family, or if a woman cannot do her household work children adopted by a relative or friend, who considers them as his own children. p. 580. Bachelors without relatives, cripples, men who have lost their sledges or dogs, sometimes adopted and serve without loss of esteem adoptive families. p. 581.

#### WYANDOTS :

Descent in female line, "the woman carries the clan." p. 59.

Prisoners of war adopted into tribe and therefore necessarily into some family or killed. p. 68.

Two young men may agree to be perpetual friends. Each reveals to other secrets of his life, counsels with him on matters of importance, defends him from wrong or violence, and at his death is chief mourner. p. 68.

#### MELANESIANS :

Banks' Isls. and New Hebrides : Two matronymic, exogamous divisions. No distinguishing name or badge. Members of one *veve* (division) said to be *tavalaima* to the other, "of the other side of the house." Florida and adjacent Solomon Isls.: Six

matronymic, exogamous kin divisions, named after places or animals. Each division has its abomination, *buto*, to eat or see or touch which would be a dreadful thing. In one case only is the *buto* the creature after which division is named. Ulawa, Ugi, parts of San Cristoval, Malanta, Quadalcanar: No kin divisions, descent follows the father. pp. 21-34.

Adoption common; childless parents naturally adopt a child of same division as adoptive mother. If an orphan of father's division is adopted, when it is grown, it will leave its adoptive parents and go to members of its own division. p. 23.

#### EWÉ-SPEAKING PEOPLES:

Kinship traced through females. Arunas, an eastern tribe, say that lower jaw is only part a child gets from mother. All the rest of the body comes from ancestral spirits (*The Yoruba-Speaking Peoples*, p. 131, footnote). Among upper classes only in Dahomi kinship traced through fathers, involving paternal proprietorship in children and primogeniture. pp. 209-210. Also pp. 163-164. Among easterly tribes, priest tells what ancestor has sent child, and gives it a name, purifying it by bathing its head with water eight days after birth. p. 154.

If a wife have no children, children of her slave by her husband regarded as hers. p. 205. The novitiate in the priesthood considered to belong to family of chief priest who initiates him. If chief priest dies childless he is the heir. A slave considered in every sense a member of his owner's family. He calls his owner "father," and is called in turn "son" or "daughter." p. 291.

Kinship does not appear to be traced beyond fourth cousin. p. 208.

#### TSHI-SPEAKING PEOPLES:

Said that formerly male infants always had for a second name (the first name comes from birthday of child) that of maternal grandfather, and females that of maternal grandmother. Now eight days after birth father visits child. Handed to him, he squirts a little rum from his mouth into its face, and gives it its second name, generally that of a particular friend or deceased ancestor. pp. 234, 233. Matronymic clan organisation. Clan name the test of kinship. (*Yoruba-Speaking Peoples*, p. 297.) Next of kin is a man's brother born of same mother; then his



eldest sister's eldest male child ; then the nephew next in order of descent. p. 298.

A woman who has not heard of her husband for three years may marry again, and right of second husband remains valid even should first return, but any children by the second may be pawned by the first husband. p. 285. If a wife have no children, then children of her slave by her husband regarded as hers. p. 288. Slave addresses master as "my father," and master slave as "my son." p. 291.

#### YORUBA-SPEAKING PEOPLES:

Kinship traced through both parents. p. 176. Children by different mothers, but same father, by many natives still scarcely considered true blood-relations. p. 176. Seven days after birth in case of girl, nine days in case of boy, priest performs ceremony of purification for mother and child. Bathing child's head with water, repeats three times its name. p. 153. Soon after a birth a priest ascertains what ancestral soul has been reborn in infant, and parents informed that it must conform in all respects to manner of life of this ancestor. p. 152.

Formerly when an elder brother died next brother married his head-wife, and were deceased childless, first son of this second marriage named after him and considered to fill place of son, but he inherited only from actual father. p. 186.

#### THOMPSON RIVER INDIANS:

Blood relationship considered a tie which extended over generations, both in male and female line. p. 290. A child could be named from either father's or mother's ancestors or people. pp. 290-291. When adults changed their names, the name generally chosen that of some deceased relative, such as father, brother, uncle, etc., in case of males. Name of a deceased relative not taken until at least a year or more after death. It is a matter of pure choice among a group of relatives who shall take name of deceased or whether it shall be taken at all. However, nearest of kin generally takes it, and older takes precedence of younger. p. 291.

Some captive children were adopted into family of their master. p. 290.

## KABYLES :

Seubkha. If a woman remarries and is confined before nine months, the child may be claimed by her husband as his unless she has declared before witnesses that she was pregnant before marriage. In which case child is returned to her first husband or his relatives. iii., 439.

## ANCIENT ARABS :

Nor has he made your adopted sons your real sons. Call them by their fathers' names ; that is more just in God's sight. xxxiii., 4-5.

## ANCIENT HEBREWS :

And yet indeed she [Sarah] is my sister ; she is the daughter of my father, but not the daughter of my mother ; and she became my wife. Gen. xx., 12.

Rachel was barren, and she gave her maid Bilhah to Jacob that she might have children by her. A son was born to Bilhah, and Rachel said: God hath given me a son. Leah also gave her maid to Jacob. Two sons were born, and Leah named them. *Ib.* xxx., 4-13.

And Judah said unto Onan, his son ; go in into thy brother's wife, and marry her, and raise up seed to thy brother. The Lord slew him for failing to do this thing. *Ib.* xxxviii., 8-10. If brethren dwell together and one of them die, and have no child, the wife of the dead shall not marry without unto a stranger : her husband's brother shall take her to him to wife, and perform the duty of a husband's brother unto her. And it shall be, that the firstborn which she beareth shall succeed in the name of his brother which is dead, that his name be not put out of Israel. And if the man like not his brother's wife, then let his brother's wife go up to the gate unto the elders, and say, my husband's brother refuseth to raise up unto his brother a name in Israel, he will not perform the duty of my husband's brother. Then the elders of his city shall call him, and speak unto him : and if he stand to it and say, I like not to take her ; then shall his brother's wife come unto him in the presence of the elders, and loose his shoe from off his foot and spit in his face, and shall answer and say, So shall it be done unto that man that will not build up his brother's house. And his name shall be called in Israel, The house of him

that hath his shoe loosed. Deut. xxv., 5-10. The nearest kinsman of Mahlon, deceased, refused to redeem his land and marry his widow to raise up the name of the dead upon his inheritance lest he should mar his own inheritance. Ruth iv., 5-6.

#### BABYLONIANS :

If either a slave of the palace or a slave of a freeman take the daughter of a man (gentleman) and she bear children, the owner of the slave may not lay claim to the children of the daughter of the man for service. § 175.

If a man take in his name a young child as a son and rear him, one may not bring claim for that adopted son. § 185. If a man, who has taken a young child as a son and reared him, establish his own house and acquire children, and set his face to cut off the adopted son, that son shall not go his way. The father who reared him shall give to him of his goods one-third the portion of a son, and he shall go. He shall not give to him of field, garden, or house. § 191.

#### ANCIENT HINDUS :

The husband, after conception by his wife, becomes an embryo and is born again of her. ix., 13. A student may not beg from *his own or his mother's* blood-relatives. ii., 184. By the sacred tradition the woman is declared to be the soil, the man is declared to be the seed. In some cases the seed is distinguished and in some the womb of the female ; but when both are equal, the offspring is most highly esteemed. . . . The seed is declared to be more important, for the offspring of all created beings is marked by the characteristics of the seed. ix., 33-36.

The offspring of a man who marries a second wife having begged money to defray the marriage expense belong to the giver of the money. xi., 6. The owner of a woman, not the begetter of her children, is the father of her children. ix., 48-55. On failure of offspring a woman who has been authorised may obtain children by cohabitation with a brother-in-law or some other Sapinda of her husband. Not more than one, or, at any rate, two sons shall be obtained in this way and then the cohabitation shall utterly cease, on pain of becoming outcasts. ix., 59-63. If a younger brother beget a son to his elder brother, then the latter foregoes his right to an additional share of the paternal inherit-

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If a man take in his name a young child as a son and rear him, one may not bring claim for that adopted son. § 185. If a man, who has taken a young child as a son and reared him, establish his own house and acquire children, and set his face to cut off the adopted son, that son shall not go his way. The father who reared him shall give to him of his goods one-third the portion of a son, and he shall go. He shall not give to him of field, garden, or house. § 191.

#### ANCIENT HINDUS :

The husband, after conception by his wife, becomes an embryo and is born again of her. ix., 13. A student may not beg from *his own or his mother's* blood-relatives. ii., 184. By the sacred tradition the woman is declared to be the soil, the man is declared to be the seed. In some cases the seed is distinguished and in some the womb of the female ; but when both are equal, the offspring is most highly esteemed. . . . The seed is declared to be more important, for the offspring of all created beings is marked by the characteristics of the seed. ix., 33-36.

The offspring of a man who marries a second wife having begged money to defray the marriage expense belong to the giver of the money. xi., 6. The owner of a woman, not the begetter of her children, is the father of her children. ix., 48-55. On failure of offspring a woman who has been authorised may obtain children by cohabitation with a brother-in-law or some other Sapinda of her husband. Not more than one, or, at any rate, two sons shall be obtained in this way and then the cohabitation shall utterly cease, on pain of becoming outcasts. ix., 59-63. If a younger brother beget a son to his elder brother, then the latter foregoes his right to an additional share of the paternal inherit-



ren nor legitimate descendants, and when they are at least fifteen years older than individuals whom they propose to adopt. 345. Right to adopt can only be made use of in favour of individual to whom person has given assistance or of whom he has taken care uninterruptedly during six years at least when he was under age, or in favour of one who has saved the life of person who adopts, either during a battle or by rescuing him from fire or water. In second case it shall be sufficient if adopter is of full age, older than adopted, without children or legitimate descendants, and when married, if husband or wife consents to adoption. 346. Adoption can never take place before the adopted is of full age. If adopted still has his father and mother, or one of them, and has not reached full age of 25, he shall be bound to produce the consent to the adoption given by his father and mother or the survivor of them; and if he is over 25, to solicit their advice.

#### PEOPLE OF UNITED STATES :

In some States an illegitimate child follows settlement of mother. § 278 a.

In some States adoption recognised, rights of adoptive parents being treated substantially as those of a natural parent. In some cases adoption of a stranger as co-heir with one's own child dis-  
countenanced and in some States adoption not allowed at all.  
§ 232.

## LECTURE XII

KINSHIP GROUPS. THE PRIMITIVE SIMPLE FAMILY. THE  
COMPOUND FAMILY. THE MATRIARCHATE

**B**LOOD-KINSHIP is in all social groups an important, if not the most important, social tie, and kinship groups are the chief, if not the only, social organisations of any community. Simple groups of parents and their offspring, more complex groups consisting of more than two generations and frequently of collateral kinsfolk (the compound family, matriarchal or patriarchal), still more complex groups claiming descent from a common ancestor, the clan (totem clan, matriarchal and patriarchal clan) and phratry are the social groups based on kinship. The tribe and tribal confederation may or may not be so considered. There are several different types of tribal organisation. We shall refer to them briefly in describing the smaller kinship groups.

Blood-kinship and  
social organisation

Kinship groups

There is probably no known group of human beings in which no blood-kinship is recognised outside of the simple group of parents and offspring; but this group may be and frequently is the only kinship group to the members of which reciprocity of rights and duties to any extent attach. As such it is characteristic both of small primitive hordes and of complex modern societies.

Simple family

The simple family of the primitive horde<sup>1</sup> is usually

Organisation of  
primitive simple  
family

<sup>1</sup> Group marriage or quasi-group marriage is also found in this cultural stage.

monogamous. When polygyny occurs, the number of wives is commonly small, rarely more than two or three, and there is little or no subordination among them. In exogamy wives always follow their husbands' hordes. Husband and father mastery while the group remains together is pronounced. Wives, however, are not uncommonly exchanged with or lost to other men. In separation offspring follow either father or mother. If young they always continue with the mother. The birth rate is usually high. There is also a high infant death rate. It is due to natural causes or to the practice of infanticide. Fœticide and the prevention of conception are of comparatively rare occurrence. The number of children in a family is two, three, or four, seldom more. The period of lactation is long, lasting from two to three or even four or five years. After this period children quickly learn through imitating the very simple economic arts of their families to provide for themselves. Parents are indulgent or indifferent; discipline is rare. Sons are separated from their mothers when from seven to twelve years old, and a few years later become independent of their fathers. Daughters are married off when very young, often before nubility. In many cases nubility occurs at from eight to twelve years of age. Wives are obtained through the barter of daughters or sisters or through special acts of service. Presents sometimes accompany the bargain. Female chastity before marriage is unusual; but the adulteress may be brutally punished by her husband. Where descent is formally reckoned, it may be in both lines or it may be either matronymic or patronymic. The classificatory seems in most cases to be the prevailing

kinship system. The reckoning of descent becomes more important and more formal under clan organisation, for exogamous marriage restrictions are thereby defined, and the passing on of totemic practices thereby regulated.

It is necessary at this point to consider briefly the system of primitive thought known as totemism. A totem is a class of objects—animals, plants, stones, etc., or in rare instances artificial things—which are believed to be intimately and helpfully related to a man. There are three kinds of totems—individual, sex, and clan totems. The individual totem is of interest in a study of the family from the facts that it is sometimes inherited by a son, a nephew, etc., and that the securing of a totem for a child at birth or later is a matter of parental solicitude. The sex totem is a striking illustration of the differentiation of interests according to sex. Women sometimes defend their totem with considerable force and acrimony against the attack of men, and *vice versa*. Totemism is most widespread and most influential in the clan organisation. The clan totem is reputed to be the common ancestor of all members of the clan. Members of the totem clan are commonly forbidden to eat or kill or, in case of a plant, cut representatives of the species to which their ancestor belongs, although on rare occasions they are in some cases obliged to eat or gather, although sparingly, such representatives. Sometimes they may not touch or even look at their totem, and various practices expressive of respect or affection for the totem are customary. Sickness or death are commonly believed to follow infractions of totem regula-



tions. Totem insignia are used in personal decoration through painting, tattooing, scarification, arrangement of the hair, etc., and in the decoration of weapons, boats, household equipments, graves, etc. Rites for the purpose of increasing the totem-species or for purposes which are not as yet fully understood, but which are plainly expressive of animistic<sup>1</sup> thought, are practised on occasions of the assembly of members of the totem clan. The initiation of the youth into the totem regulations or magic of their totem clan is one of the most important of these occasions. Birth and marriage ceremonial have also at times a totemistic character, assimilation with or the protection of the totem being desired. Totem clans are with rare exceptions exogamous (the relation between totemism and clan exogamy is still, however, an open question); so that local groups or hordes are made up of members of different totem clans. Under a patronymic system the horde will obviously be more homogeneous than under a matronymic (except perhaps in rare matriarchal cases where the husband joins the wife's group). Theoretically, blood-feud is a function of the totem clan. (Blood-feud is the exaction of revenge for injuries received by a member of a kinship group by the whole group, and the payment by the group of compensation—composition—for injuries inflicted by one of its members upon the member of another kinship group.) Practically, however, the horde tends to share in the quarrels of its members.

Totem clans

Blood-feud

Phratry

Totem clans are sometimes grouped together into a phratry, or rather a tribe subdivided into two, four,

<sup>1</sup> The method adopted is usually that of assimilation with the totem through representation of its appearance or motions.



or eight divisions, which in turn contain, although not in all cases exclusively, two or more totem clans. Such phratries are usually exogamous. At funerals or festivities clans may assemble as phratries, and in the case of inter-clan murder, the phratries may intervene.

To return to the primitive type of simple family, we find it in groups both with and without a totem clan or phratry organisation. In the former case the functions of the family tend to be more or less taken over by the clan. In either case the *local* group or horde to which the family belongs is comparatively small, consisting of from twenty to one hundred or one hundred and fifty individuals. Even in such small hordes families may camp separately, either singly or by twos or threes. These families are likely to be related by blood. They may be, for example, the families of two brothers, or of father and son or son-in-law. In fact, whatever the prevalent kinship system, many members of the horde itself are bound to be blood as well as totem kindred. This is all the more likely where there is no exogamous totem clan system and the horde is endogamous.

Primitive simple family, totem clan, and horde

Kinship within the horde

This scattering of the families in the horde as well as the limited number of the horde itself is due to the exigencies of the mode of subsistence, a low type of hunting or fishing. The hordes live, as a rule, in barren regions, in which plant and animal life is more or less scant. The men kill or trap small game or fish and the women gather insects, roots, fruits, berries, or shell-fish. The meagreness of this food supply precludes a settled life as well as the formation of large groups. The families or hordes migrate over land

Effect of mode of subsistence on size of group

Division of labour according to sex

Migratory groups

which is accounted common to the horde or tribe to which the horde belongs. The men of the horde may sometimes unite in hunting or fishing excursions, the spoils being more or less definitely apportioned according to the parts played in the capture. In some cases, however, there seems to be a tendency for individuals, *i. e.*, heads of families, to appropriate hunting or fishing places and to pass on the right to use them to their sons. There is need of much more ethnographic information on this subject.

The tribe

Its government

Several hordes speaking the same dialect and uniting for fighting or festivity or for the practice of magic ceremonial by the totem clansmen may compose an undeveloped type of tribe. There is as a rule no tribal chief or council. In fact in groups without a totem clan organisation there is so little intercourse between the hordes that the tribe as a social organisation is practically non-existent. Affairs are directed by the elder, sometimes by the stronger or more enterprising or by the magically gifted men of the horde. One of the elder men may have predominating influence. Under totem clan organisation, if the tribe is patronymic, and the hordes as we have seen tend to be composed of a majority of one totem clan, wives always living in their husbands' hordes, the *head-man* may have to belong to the predominant totem clan.

Inheritance

There is a tendency for this position to be passed on from father to son if, at the death of the former, the latter be of a suitable age, if he be competent, and if he belong to the predominant totem clan. Sons may also inherit magic ceremonial from their fathers where there is an individual as well as a clan totem system. Even under the latter system special ceremonies may

be passed on in families. In case of polygyny sons inherit their fathers' wives if they are old enough to marry them, otherwise they go as a rule to their father's brothers. Sons also inherit, as a rule, the right of bartering their sisters in marriage. There is little or no personal property of other kinds to inherit. A man's weapons, boats, traps, etc., are frequently broken or buried or burned at his death. Sometimes they are given away by his heirs. In these customs and in customs probably arising from fear of deceased persons,—deserting or destroying the hut of the deceased, frightening away his spirit by noise, charms, etc., ceasing to speak of him by name, amputating or binding the fingers, hands, feet, etc., of the corpse, killing the enemy who is supposed to have caused his death,—may be seen the beginnings of ancestor-worship. We shall consider this subject more fully in discussing the compound patriarchal family where a fully developed ancestor-worship is an extremely influential factor.

**Beginnings of  
ancestor-worship**

As in the case of totem clan so with that of compound family organisation, the functions of the simple family tend to be merged into those of the larger group. In the compound matriarchal or patriarchal family three or more generations of ascendant or descendant or collateral relatives are bound together by special economic, juridical, and religious ties. The religious and some of the economic ties we shall consider in connection with special types of compound families. The juridical and other economic ties may at once be described as their character is in general the same. In well-developed types of compound family property is generally owned in common by the group.

**The compound  
family**

**Property**

All forms of property, movable and immovable, cattle, field and household implements, land and dwellings, and even clothes, may be held in common, or special kinds of property or property that has been individually acquired or produced, war-booty, cultivated fruit-trees, and gardens, etc., may be looked upon as belonging to the individual acquirer or producer. All inherited property may in this sense be group property. Land—hunting, pasture, and even tillable land—may belong to the clan or tribe instead of to the compound family. In this case the use of the land only may be given to would-be cultivators and the land may revert to the landlord group whenever it ceases to be cultivated or at the end of an arbitrary period.—We should note carefully in this connection, that the notions of land-ownership, both individual and communal, that are held in ethnic groups differ to a considerable extent from those of civilisation. In the former, the habit of *using* a piece of land leads to the idea of the right to *use* it<sup>1</sup>; in the latter, land is assimilated with other forms of property to be used or not at the pleasure of the possessor.—The rights of the different family members upon the family property vary. The family head may have the sole control, or every male, more rarely female, member may have an equal claim. In some cases family property may be indivisible, in others, it may be alienated under special circumstances, *e. g.*, great poverty, the paying of family debts or ransoms, at the consent of all members of the family. Again, in other cases, a partition may be provided for at a given time or generation, in the lifetime or at the

<sup>1</sup> See Lasch, *Die Landwirtschaft der Naturvölker* in *Zt. f. Socialwissenschaft*, vii, (1904), 256.



death of the housefather, in the second or third generation, etc., or when the group has grown beyond a certain size. Frequently a partition or individual inheritance of personal property is customary while that of real property is not. The selling of real property owned by the compound family may also be forbidden. Again, property may be sold out of the simple family but not out of the larger kinship group, *i. e.*, compound family, or if the former means of disposal be allowed, then an option of purchase (preëmption) or a right to redeem the property belongs to the kinsmen. Inheritance of family property varies according to the type of the compound family. We shall, therefore, consider this subject again later.

All the members of the compound family are, as a Juridical ties rule, responsible for the offences of any one member. They are subject with him to fine or punishment. They may also be called upon to pay his debts, to ransom him from captivity, or to support him or his wife and offspring if he become destitute or fall in war, or if need be to contribute to the bride-price he may have to pay for a wife. The compound family is also bound to support its helpless members in general, young or old or invalid. Frequently no member of the compound family may leave it without permission and, on the other hand, exile from the group may be inflicted only for stated offences. The group exacts blood-vengeance or composition for offences committed against its members. A word about this principle of Blood-feud revenge in ethnic society will be in place. Vicariousness is characteristic of revenge in ethnic society. Killing must be revenged by killing, but not necessarily by that of the murderer. A member of his family,



simple or compound, of his clan or of his tribe may be the object of vengeance. Similarly blood-feud may be carried on by one or another of these kinship groups. From the ethnographical information given it is often very difficult to determine upon which or what part of a kinship group the duty of blood-feud falls. In some cases it may be limited to the nearest blood-relatives, in others it falls indifferently upon any kinsman. In many cases blood-feud is a duty to the murdered. For neglect to revenge his death his living relatives would be punished by his spirit. In many communities blood-vengeance may be bought off by payment of a blood-price, by composition. The blood-price commonly varies according to sex, age, or rank. The murder of a woman costs less, as a rule, than that of a man. A woman of child-bearing age or a pregnant woman is valued higher than a female of non-reproductive age or capacity. Children, male as well as female, are of less value than adults. Where economic classes are at all differentiated the murder of a slave or commoner, for example, is redeemable for less than that of a noble or chief. Death or enslavement are the most common results of inability to pay the blood-price. The practice of composition may be more or less fortuitous, the injured person or family may have the right to choose between blood-vengeance or composition, or composition only may be sanctioned by the group. The function of blood-feud tends to disappear with many other family functions with the development of the state. Transition forms are the custom of the aggrieved family paying the chief or over-lord for punishing the offender, of the latter's handing over the arrested offender to the family for punishment, of

Composition

Encroachment of  
state upon family  
law

the right of the family to participate in the execution of the offender, and, most important of all, of confining the punishment to the offender himself instead of vicariously punishing any member of his kinship group.

Compound family groups may or may not form a common household. In the former case the recognised kin may also extend beyond the house-community. The compound family ties are closer at times than those of the simple families within it. The claim of the group-head to the obedience, service, etc., of the group members may, for example, be greater than that of the father in the constituent simple family to the obedience, service, etc., of his offspring. On the other hand, reciprocal rights and duties are as a rule graded to a certain extent according to nearness of blood. The duty of blood-vengeance, for example, may fall (under patriarchal organisation) first upon the son of the man to be revenged, then upon his brother, then upon his paternal uncle or cousin, and finally upon any or all of his more remote agnatic kinsmen. Compound family ties are also more binding than those of local groups or totem clans (where these exist) or tribes, whenever a distinction is made between the compound family and the latter social types.

There is much confusion both of thought and terminology in regard to the compound family and the totem or non-totem matriarchal or patriarchal clan. Physical concentration, *i. e.*, a common household, may be taken as a criterion, but only a partial criterion of the compound family as distinguished from the matriarchal or patriarchal clan; for the reciprocal rights and duties of a blood group whose simple families live in separate households may be equal to, if not

Relation of compound family to household group, simple family, totem clan, tribe

Need of definition of groups

greater than, those of a group living in the same household. The whole subject needs careful analysis and definition. We shall not attempt this here. In the special studies suggested in Note C we may find that some of the features already given in the description of the compound family and to be given in the descriptions that are to follow of special types of compound family may more properly be considered characters of the matriarchal or patriarchal clan or, in accordance with the distinctions already made between matriarchate and matronymy, etc., of the matronymic or patronymic clan.

**The matriarchal  
family**

A pure type of matriarchal family is rare. Some of the features which we are about to discuss are found in one community, some in another.

**Matronymy**

**Residence with  
wife's family**

Matronymy always accompanies the matriarchate, but, as we have already seen, it is not exclusively characteristic of the matriarchal family. Residence with the wife's kinsfolk is, on the other hand, a more certain index of this type of family. Here again, however, there is a tendency both in the simple and compound patriarchal family for the older and leading men to retain their married offspring, daughters and sons. This residence may be permanent, or, as in marriage by service, temporary. Correspondingly, all offspring may be accounted to the maternal kindred, or only offspring that are born during the temporary residence in the maternal home. Of great interest in this connection, as well as in the study of methods of mate-getting, is the co-existence in the same community of marriage by purchase, with full marital and paternal powers, and residence, of course, in the man's home, and marriage by service, with limited marital

**Mixed systems**

and paternal power and residence in the woman's home.

Marriage may be polyandrous, polygynous, or monoga-

Forms of marriage

mous. If polygynous, the wives are frequently sisters

Sister-polygyny

or other relatives, ranking, as a rule, according to sen-

Subordination  
among wives

iority. The value of woman's work, which we shall con-

sider later, creates a tendency towards polygyny. The

right to divorce is, in general, reciprocal. Offspring re-

Abortion

main with the mother or her family. The number of off-

spring is often artificially limited, abortion being the

Lactation

most common means in use. The lactation period is

often long, although such protracted periods as four

Control of offspring

or five years are rare. The mother and her male rela-

tives, particularly her brothers, have the major control

of the children; infanticide may not be practised with-

out their consent; they determine the marriage of

daughters and receive the marriage gifts from the

groom; they sometimes make return gifts. Girls have,

as a rule, however, some influence in the selection of

their husbands, although infant- and child-betrothal

also occur. Lack of chastity in girls before marriage

is not uncommon. Sometimes it is condemned, some-

times it meets with more or less indulgence. Wifely

infidelity is more severely treated; but the punish-

ments are not as harsh as under patriarchal organisa-

Age at marriage

tion. Marriage occurs at or after nubility. Youths

may not marry until some time after puberty, either

because of the difficulty of getting a wife or because

At initiation

of initiation rules. Initiation takes place between the

ages of fourteen and eighteen. There are traces of

Discipline of  
offspring

discipline in the bringing up of children and more or

less systematic training of boys in endurance, speed,

Avunculate

courage, etc. This task frequently falls to the

mother's brother. The system of claims upon the



mother's brother for such discipline, for support and protection in various ways, and for inheritance of rank or property, is known as the *avunculate*.<sup>1</sup> Under the avunculate, as a rule, the mother's brother has had a say in the marriage and protection of the mother, his sister, as well as of her children. *Vasu-right*<sup>2</sup> is an extreme form of the avunculate. By it the nephew has a claim upon his maternal uncle's property, even during the latter's lifetime.

*Vasu-right*

Character of group  
to which matriar-  
chal family belongs

In case of a common household or house-community, from twenty to five hundred individuals may live together, and several households may camp or settle in one group. In the case of hunters or fishers, these groups are still migratory, but the stays in different places are longer and there may be permanent seasonal villages. The food supply is more abundant and certain, for these groups live in more favourable regions where animal life is richer than do the lower cultural groups.

Economic arts

The weapons, nets, and traps of the men, moreover, are better adapted for hunting and fishing, and the women, besides gathering shell-fish, roots, berries, etc., also, in some cases, carry on, even where hunting or fishing is the chief mode of subsistence, a primitive kind of agriculture. But in the greater number of communities, where matriarchal features are at all marked, the tilling of the soil by both sexes tends to be the chief and most dependable mode of subsistence. In such agricultural communities the groups are still larger and the life is sedentary. Handicrafts begin to develop. The men build canoes and huts and make nets. The women weave and make pottery. It is evident, therefore, that the economic training of boys

<sup>1</sup> *Avunculus*, mother's brother.

<sup>2</sup> Fiji term.



and girls will cover a longer period than in the ruder community of the primitive simple family. It is evident, also, that the increased value of woman's work will be a factor in determining residence in the bride's home, as well as in creating a desire for polygyny among the older and richer men, the household heads. Personal property consists of women, in a few cases of slaves, of boats, utensils, clothes, including blankets, weapons, traps, etc. It is inherited either through the maternal uncle, as we have seen, or through the mother, married women having a right to certain kinds of goods—*e. g.*, household utensils and clothes. The hut or lodge may also be accounted theirs. These goods may be inherited by daughters. Otherwise women do not, as a rule, inherit. They are rather inherited. Exceptions to this rule are, of course, cases where women are the household heads. Sons (or nephews) inherit equally as a rule. In the agricultural groups land and dwellings are owned in common by the house-community. Partial inheritance through the father is, as we shall see later, a common indication of transition from the matriarchate to the patriarchate. Personal property is also to a certain extent destroyed with the deceased. As relations with deceased relatives are close, their spirits are propitiated with food, drink, etc., offerings, and they are appealed to for help. Totemism is, however, more or less well-developed, although it has assumed more of a religious and less of a juridical or economic character. Totem clans are primarily exogamous marriage groups.<sup>1</sup> On the other hand, where husbands perma-

Effects of increased  
value of female  
labour

Inheritance

Equal inheritance  
by males

Developing  
ancestor-worship

Changed character  
of totemism

<sup>1</sup> This statement may at first seem inconsistent with the preceding. Whatever the origin of exogamy, it seems, however, in view of the supernatural sanctions so generally attaching to it, to be a religious rather than a juridical fact.

nently join their wives' groups, the totem clan tends to be a more concentrated group, with economic and juridical functions. Land may be common to the totem group. It may be wholly or partially cultivated in common. The totem group may be responsible for the acts of its members, and it may exact composition for injuries suffered by any member.

#### Tribal government

The local group, whether or not a totem clan, is, as a rule, governed by heads of kinsfolks. These camps or villages may be coalesced into a tribe or district governed by a tribal council and chief, whose functions are primarily military. Tribal confederations or petty kingdoms may also arise. In the first case, the tribal chiefs form the council of the confederation; in the second, one of the tribes or chiefs has usurped control of the others, and group control tends to take on a territorial character.

#### Gynocracy

Elder women are, in a few cases, the heads of kinsfolk. They even have a seat or a voice in the tribal council (gynocracy), and there have been exceptional cases of female tribal chiefs. As a rule, however, the kinsfolk heads are the eldest or most competent males. They may be elected, or the headship may be inherited by brother or nephew.

#### NOTE A

##### KINSHIP GROUPS.

Post, *Familienrechts*, pp. 43-53, 104-112.

Giddings, *Principles of Sociology*, pp. 157-168.

##### SIMPLE PRIMITIVE FAMILY.

Dargun, *Mutterrecht und Vaterrecht*, chap. ii.

Grosse, *Die Formen der Familie und die Formen der Wirthschaft*, chap. iv.

Kautsky, *Die Entstehung der Ehe*, etc., pp. 200-207.

TOTEMISM.

Frazer, *Totemism*.

TRIBAL GOVERNMENT IN AUSTRALIA.

Howitt, *Native Tribes of South-East Australia*, chap. vi.

BURIAL PRACTICES IN AUSTRALIA.

*Ib.*, pp. 434-475.

AMONG ISLANDERS OF TORRES STRAITS.

*Reports of the Cambridge Anthropological Expedition*, x.

THE COMPOUND FAMILY.

Grosse, *Die Formen der Familie und die Formen der Wirthschaft*, chap. vii.

THE MATRIARCHAL FAMILY.

Dargun, *Mutterrecht und Vaterrecht*, chap. iv.

Cunow, *Les bases économiques du matriarcat* in *Le Devenir social*, iv., 42-65, 146-162, 330-342.

Wilken, *De Verbreiding van het Matriarchaat op Sumatra*.

GENTILE RIGHTS AND DUTIES.

Post, *Grundriss*, i., 161-183.

GENTILE PROPERTY.

*Ib.*, i., 196-226.

*Familienrechts*, pp. 266-291.

BLOOD-FEUD.

*Ibid.*, pp. 113-137.

*Grundriss*, i., 226-261.

Steinmetz, *Ethnologische Studien*, etc., i., 365-395.

Westermarck, *The Origin and Development of the Moral Ideas*, pp. 477-491.

NOTE B

PRIMITIVE HUMAN HORDE.

Original form of human association before the idea of kinship developed. McLennan, *Studies*, etc., pp. 127-153.

The primitive relationship a space relationship. A brother-sister intermarrying monogamous horde precedes the family.

Mucke, *Horde und Familie in ihrer urgeschichtliche Entwicklung*, Stuttgart, 1895, pp. 59-60, 87-88, 297.

Hordes were composed of pairing families. Gomme, *Theory of the Primitive Horde*, in *J. A. I.*, xvii., pp. 118-133.

No evidence for existence of primitive horde. Wake, *Ibid.*, pp. 276-282.

#### RELATION BETWEEN TOTEMISM AND EXOGAMY.

Totemism preceded exogamy. The totem kin was the first group within which marriage was forbidden. Totemism implies original homogeneity, and this was incompatible with exogamy. McLennan, *Studies*, etc., *Sec. Ser.*, pp. 58-59.

Exogamy does not precede totemism. Primitive man would not be held from kinship marriage merely by abstract ideas of kinship. Robertson-Smith, *Kinship and Marriage in Early Arabia*, p. 187.

Exogamy exists without totemism, and may have been originally independent of it. Tylor, *Remarks on Totemism*, in *J. A. I.*, August, November, 1898.

Exogamous habits existed before totemism through sexual jealousy of male head, and perhaps through sexual superstition and sexual indifference to persons familiar from infancy. When the group received a totem name this would be the exogamous limit, no man or woman of the same totem name intermarrying. Later a myth of kinship with the totem would arise, and would add the religious sanction of a taboo. Lang, *Social Origins*, etc., pp. 18, 34, 63, 186. Also, *The Secret of the Totem*, pp. 143 ff.

Exogamy forms no part of true totemism. It is a great social reform of a much later date. Frazer, *The Beginnings of Religion and Totemism* in *The Fortnightly Review*, Sept., 1905.

#### ORDER OF GENESIS OF PHRATRY AND TOTEM CLAN.

The totem clan existed before the phratry, the latter being an amalgamation of two separate and independent local totem groups. Lang, *Social Origins*, etc., pp. 36, 43, 63. Also, *The Secret of the Totem*, chap. vii. *Ibid.* Cunow, *Australneger*, p. 24.

There were two original exogamous totem clans from which colonies swarmed off and formed new totem clans, but continued to unite with the original clan in phratry organisation. Durkheim, *Sur le Totémisme* in *L'année sociologique*, 1900-1, pp. 82-121.

A phratry was originally a totem clan which had undergone subdivision. Frazer, *Totemism*, p. 60.

Exogamous bi-section or phratry division occurred after formation of totem clans. Frazer, in *J. A. I.* (new series), i., 284-285.

#### ORIGIN OF THE MATRIARCHATE.

The matriarchate develops when the agricultural labour of women becomes important. This labour increases their economic value. A father is therefore unwilling to let his daughter depart at marriage, hence the husband must come to live temporarily or permanently in the wife's family. Because of her economic value he must treat her well. Her importance as furnishing the chief and most certain food supply gives her weight in all family matters. Cunow, *Les bases économique du mariarcat*, in *Le Devenir social*, iv., 338-342.

Residence of husband with wife's family. Tylor, *On a Method*, etc., pp. 258-261.

In the development of mutual aid between mother and offspring based on the originally close physiological relationship. If the service of offspring more than offsets the costs of their rearing, the matriarchal family will develop from the primitive unstable family. Friedrichs, *Ueber den Ursprung des Matriarchats*, in *Zt. f. vergleichende Rechtswissenschaft*, vii., 378-580.

Separate residence of wives and polygyny. Starcke, *The Primitive Family*, p. 54.

#### ORIGIN OF *Vasu*-RIGHT.

It grew out of the reverence of subjects for the King's sister's son. Then a kingly means of plundering. The *vasu* shared his spoils with the king. Starcke, *The Primitive Family*, pp. 92-93.



Points to the emancipation of the sister's son. Mucke, *Familie und Horde*, pp., 230-231.

#### ORIGIN OF CLANS.

Through *tribal* exogamy women captured from tribes B & C and their descendants form, because of matronymic descent, separate *clans* in their husband's tribe, A. McLennan, *Studies*, etc., pp. 64, 128-129.

Clans arose within a tribe from the custom of taking wives out of other tribes. Hellwald, *Die Menschliche Familie*, pp. 188-189.

In marriage by capture. Kautsky, *Die Entstehung der Ehe*, etc., pp. 266, 268.

#### GYNOCRACY.

A period of gynocracy everywhere followed the original stage of hetairism. Bachofen, *Das Mutterrecht*, pp. xviii.-xx.

Hetairistic mother-right is accompanied by polyandry and gynocracy. Kautsky, *Entstehung der Ehe in Kosmos*, xii.

#### NOTE C

Make a comparative study of the practice of killing an enemy at the death of a relative, distinguishing between this practice and blood-feud. Study the extent (1) to which blood-feud is an exclusively totem clan function—*i. e.*, to what extent it is also shared in by the family, horde, or tribe ; (2) to which the other functions of the simple family tend under the totem clan system to be performed by the latter. Make a comparative study of residence, common and separate, and economic, juridical, and religious ties in the compound family : (1) matriarchal, (2) patriarchal. Analyse use of terms matriarchal family, matriarchal or matronymic clan, etc., by ethnologists. Study groups in which matronymic clans may be defined—*i. e.*, where cohesion is based on the reckoning of descent and not on group control. Upon analysis of a large number of matriarchal and patriarchal organisations, suggest a method of distinguishing the matriarchal or patriarchal family from the matriarchal or patriarchal clan. Study the relation of the matriarchal family to other co-existing groups, totem clan, tribe, local group. Study the extent of totemism as a religious system in the matriarchal family.

## NOTE D

## VEDDAHS :

Each family lives during dry season on its own hunting ground. p. 475. In rainy season, in the wake of their game, families withdraw to a common cliff centre. Two or three families may live in same cave, but they partition themselves off with bark, twigs, etc. Right to a cave or to a portion of it a family inheritance. p. 477.

Most marriages made when the families of a district are together at a cliff centre. In view of hundreds or thousands of years families have lived in same district, must all be related by blood. Such a family plexus forms a clan, *warge*, and sub-clans, also called *warge*. pp. 477-478. Nine *warge* (*gross clan*) known. pp. 483-484. Over the *warge* some older man has a certain amount of influence. But position has no power attaching to it, nor is it hereditary. p. 478. Oldest or most intelligent man in *warge* or *warge*-subdivision is group's spokesman with strangers. Task of distributing honey of cliff-bees falls to him. He may be a peacemaker in certain of the group's quarrels. p. 486. In one case, an old woman, who seemed mentally more alert than the others, had a certain authority, and was appointed spokesman. p. 486.

*Warge* have no relations with one another. pp. 484-485.

Corpses left where death occurred, covered with twigs or leaves. Sometimes a heavy stone placed on breast. Place or cave deserted until decomposition was over. p. 492. Believe vaguely in existence of spirits after death ; but pay no attention to them. pp. 498-499.

## YAHGAN :

The family, *i. e.*, simple family, is well-formed. x., 333. The child belongs to both parents, but rather more to father than to mother. x., 333. In separation, children remain with father if he cares for them, otherwise they go with mother. vii., 172. Children generally follow father in divorce. x., 335.

Strictly speaking, there is no tribe. x., 333.

Property is individual and personal, consisting of dug-outs, hunting and fishing weapons, skins. x., 335.

Relatives of deceased distribute his property to his friends.

They are averse to taking possession of it themselves. H. & D. vii., 379. Possessions of the dead thrown into the sea or burned. vii., 176. Hut where death occurred generally burned and locality abandoned. Name of deceased no longer applied to any homonymous locality or person. H. & D. vii., 379. Only ghosts of criminals believed in. Much feared. They seek to harm living. x., 332.

In revenging a murder, victim need belong only to murderer's group. vii., 177. Sometimes a murderer's life is spared and he is severely beaten and forced to make many presents to the relatives of the deceased. vii., 177.

#### CENTRAL AUSTRALIANS :

Totemic system based upon idea of reincarnation of Alcheringa ancestors, who were actual transformations of animals and plants, or of clouds, water, fire, wind, sun, moon, and stars. p. 127. In many Australian tribes it seems to be a general custom that a man must not eat or injure his totem, whereas amongst Arunta there are special occasions on which totem is eaten and there is no rule absolutely forbidding eating of totem at other times, though it is clearly understood that it must only be partaken of very sparingly. p. 73. Each totem has its own ceremonies, and each of the latter may be regarded as property of some special individual who has received it by right of inheritance from its previous owner, such as father or elder brother. (He may also have received it directly from one of the men who are supposed to possess the faculty of holding intercourse with the spirits. p. 278.) In one case, office of Alatunja descended to a man from his father. It descended to him and not to his elder brother because he was born a water man, while woman who is mother of both of them conceived elder one in an opossum locality. If the old Alatunja had had no son of the right totem, then office would have descended to one of his blood brothers—always provided, of course, he were of the right totem,—and failing such a one, to some tribal brother or son of the water totem as determined upon by the elder men, or, more probably still, by the old Alatunja before his death. pp. 190-191.

Without belonging to the same group, men who inhabit localities close to one another more closely associated than men living at a distance from one another. Contiguous groups constantly

meeting to perform ceremonies. p. 14. Whole area over which a tribe extends divided up into a large number of localities, each of which is owned and inhabited by a local group of individuals, and each such locality is identified with some particular totem which gives its name to members of local group. p. 277. Most extensive of local totemic groups described consists of 40 individuals, and area of which they are recognised as proprietors extends over about one hundred square miles. p. 9. Each tribe speaks a distinct dialect and regards itself as possessor of country in which it lives. p. 7.

#### POINT BARROW ESKIMO :

Population of village of Utkiavwin was about 140, of Nuwuk about 150 or 160 (in 1853, 309). p. 43. In summer they live in tents, usually in small camps of four or five tents each. p. 83. Two families usually occupy a house, each woman having one end of room and her own mat. Some houses contain but one family and others more. A house at Utkiavwin contained a father, his wife and adopted daughter, two married sons, each with his wife and child, his widowed sister with her son and his wife and one little girl. p. 55. Seniority gives precedence when there are several women in one hut. p. 427.

Not the slightest trace of clan or tribal organisation. p. 42.

Owners of the boats more thrifty and intelligent, better traders and usually better hunters, as well as physically stronger and more daring. Have more influence and respect, but appear to have absolutely no authority outside of their own families. p. 429. Smaller animals, birds, reindeer, etc., are property of hunter. Larger seals and walruses divided among boat's crew, owner of the boat apparently keeping tusks and perhaps skin. A bear is equally divided among all who had a hand in any way in the killing. Whalebone equally divided among crews of boats in sight at time of killing. All comers have a right to all flesh, blubber, and black skin that they can cut off. The finder of drift-wood is its owner and puts his own mark upon it. p. 428.

Various implements belonging to deceased broken and laid beside corpse and the sled is sometimes broken and laid over it. Sometimes sled is left for one moon near the cemetery, after which it is brought back to the village. p. 424.



## BEHRING STRAIT ESKIMO :

One village contained about 20 houses and about 125 people. Another about 100 people, another 20, another 150. pp. 250-252. From one to three families may occupy platforms in single room which the house contains. But each quite independent in its arrangements. p. 288.

No recognised chiefs except such as gain a certain influence over fellow-villagers through superior shrewdness, wisdom, age, wealth, or shamanism. The old men are listened to with respect and there are usually one or more in each village who by their extended acquaintance with traditions, customs, and rites connected with festivals, as well as being possessed with an unusual degree of common sense, are deferred to and act as chief advisers of community. p. 304. Head man of village has no fixed authority, but he is respected and his directions as to movements and occupations of villagers generally heeded. p. 304. Jealousy of anyone who accumulates property; consequently rich men in order to retain public good-will forced to distribute food and other presents at festivals and thus create a body of dependents. p. 305. Presents from strangers always handed to head men of village who divide and distribute them among others. p. 287. Sometimes these shrewd and rich men obtain a stronger influence by combining offices of shaman and head man. p. 305.

In some cases a head man may be succeeded by his son when latter has necessary qualities. p. 304. Whatever, with a few exceptions, a man makes or obtains by hunting is his own. p. 307. Stealing from same village regarded as wrong. The thief is made ashamed by being talked to in the *Kashim* when all the people are present and in this way frequently forced to restore articles. To steal from a stranger or from people of another tribe not considered wrong so long as it does not bring trouble to community. p. 293. If a man borrows from another and fails to return article, not held to account for it under general feeling that if a person has enough property to enable him to lend some of it he has more than he needs. p. 294. Right to use productive places for setting seal and salmon nets individual and handed down from father to son. After the father's death sons use these places in common until all the brothers save one get new places. p. 307. The part of a deceased man's property that is not placed at his grave is



divided among his children and other relatives, former usually receiving larger share. Wife generally makes distribution. In some cases, however, man's blood-relatives are greedy. They make the division among themselves, leaving very little for family. p. 370. Eldest son gets the least, youngest the most valuable things—*i. e.*, heirlooms, father's rifle. p. 307. At a man's death his sons if old enough support family, otherwise they are cared for by relatives. p. 307.

Corpse dressed in best clothing possessed, if possible that which has never been worn. p. 310. Lower Yukon: The people so averse to having a corpse in the house that relatives frequently dress the person in the new burial clothing while dying that he may be removed immediately after death. p. 314. Corpse usually raised through smoke-hole in roof, never taken out by doorway. p. 311. Totem marks drawn on grave box, etc., to mark remains. p. 311. Use of grave box an innovation, but stated that it was useful, for it kept the shades from wandering about as they used to do. If deceased was disliked or without relatives to make a feast, no totem markings put on box. p. 312. Anciently arm and leg sinews of a dead person who had been of evil repute were cut in order to prevent him from returning to the body and walking at night. p. 423. Deceased's sleeping place must be swept clean at once and piled full of bags, etc., so as not to leave any room for shade to return and occupy it. p. 315. Relatives make small offerings of food and pour water on ground after grave is arranged. p. 312. At grave are placed deceased's knife, flint and steel, tinder and pouch of tobacco, snuff-box and tube. In case of a woman, her workbag, needles, thread, and fish-knife are put in the box; her wooden pots, etc., by the grave; and to the corner posts are hung her metal bracelets, deer-tooth belt, and favorite wooden dish. p. 311. In case of a very bad man, no weapons or marks of respect placed near grave, no feast to his memory, and he was forgotten. After a death no one in village permitted to work for one day, relatives for three days. p. 312. During the four days after death while shade is believed to be still about, his house-mates must keep fur hoods drawn over their heads to prevent his influence from entering their heads and killing them. p. 315. The two persons who slept with deceased on each side must not on any account leave their places, otherwise

shade might return and by occupying vacant place bring sickness or death to its original owner or to inmates of house. For this reason none of deceased house-mates permitted to go outside during four days following the death. p. 315. Use of any edged or pointed instrument especially forbidden to avoid cutting or injuring shade, otherwise it would become very angry and bring sickness or death to people. Relatives must be very careful not to make any loud or harsh noises that may anger or startle shade. p. 312. Every year in latter part of November or early in December a feast is given for sole purpose of making offerings of food, water, and clothing to dead who have not yet been honoured by one of the great festivals. Makers of this feast are nearest relatives of those who have died during preceding year, joined by all others of village who have not yet given a great feast to their dead. Day before nearest male relative goes to grave of deceased and plants before it a newly made stake upon which is placed a small model of a seal spear, or if a woman, a wooden dish. This is the invitation to the shade, p. 363. On day of feast no one allowed to work. All work with sharp-edged or pointed tools prohibited for fear some shade may be injured and become angry and harm the people. At opening song of invitation shades come from their graves and assemble in fire-pit under floor of *Kashim*. Thence they ascend and enter bodies of their namesakes, thus obtaining for themselves offerings which are made to their namesakes. These are the supplies necessary for shades' wants in the land of the dead. p. 364. A small portion from every dish prepared for feast is cast down on floor. Each feast-giver pours a little water on the floor so that it runs through the cracks. In this way they believe spiritual essence of the entire quantity of food and water from which small portions are offered goes to the shade. This essence believed to be transported mysteriously to abode of the shades and thus supplies their wants until time of next festival. Rest of food distributed and eaten by people present. pp. 364-365. During festival to dead, relatives sing that absent ones are missed and beg them to return to their friends who are lonely. p. 348. If shade of a man is to be honoured, a lamp is placed in front of place he formerly occupied in *Kashim*. Kept burning to light him back to earth. p. 364. Chief mourner, after one or two years, commences to save up valuable articles for four, six, or even more years, until property may be worth hundreds

of dollars. Other villagers doing same thing. Finally, at holding of a minor feast to the dead, relatives plant invitation stakes, and a song of invitation is sung at the minor feast to shades to attend great feast the following year. With observance of great feast a person is supposed to have done his entire duty to the shade and may abstain from making any further feasts to his honour. p. 365.

Duty of blood revenge belongs to nearest male relative. If a man has no son, then his brother, father, uncle, or whosoever is of nearest kin must avenge him. Blood revenge a sacred duty. In one case a boy of fourteen killed a man who had murdered his father when boy was an infant. p. 293.

#### CENTRAL ESKIMO :

If distance between the winter and summer settlement is very great or when any particular knowledge is required to find out haunts of game, there is a kind of chief in the settlement, whose acknowledged authority is, however, very limited. Virtually limited to right of deciding on proper time to shift huts from one place to another, but the families are not obliged to follow him. At some places it seems to be considered proper to ask him before moving to another settlement and leaving rest of tribe. He may ask some men to go deer hunting, others to go sealing, but not the slightest obligation to obey his orders. p. 581.

Every family allowed to settle wherever it likes, visiting a strange tribe being the only exception. In such a case, new-comer has to undergo a ceremony which consists chiefly in a duel between a native of place and himself. If defeated, he runs risk of being killed by those among whom he has come. p. 581.

When thought to be dying, patient is taken out to a special snow house or hut. If a person should die in a hut among its inmates, everything belonging to hut must be destroyed or thrown away, even tools, etc., lying inside, becoming useless to survivors. Hut where death takes place deserted forever. pp. 612-614. A man's hunting implements and other utensils placed by side of grave; pots, lamps, knives, etc., by the side of a woman's; toys, by that of a child. On third day after death, relatives visit grave and promise to bring deceased something to eat. These visits repeated a year after death and whenever grave is passed in travelling. Sometimes food is carried to the grave which deceased is expected to return greatly increased. pp. 613-614.

Sometimes models used instead of objects themselves. A case cited of a young girl who, dying, asked for tobacco and bread, which she wished to take to her mother, who had died a few weeks before. p. 613.

If a woman die, husband leaves his children with his parents-in-law and returns to his own family; and if a man die, his wife returns to her parents or her brothers. When a woman dies after children are grown, widower will stay with them. p. 580. Widows with their children adopted by nearest relative or by a friend and belong to the family, though the woman retains her own fire-place. p. 580. The wife's mother can always command a divorce. p. 579. In divorce, children generally remain with mother. p. 580.

Right and duty of nearest relative of victim to kill murderer. In certain quarrels between the Netchillirmiut and Arfeillirmiut, in which murderer himself could not be apprehended, family of murdered man has killed one of murderer's relations in his stead. p. 582. If a man has committed murder or made himself odious by other outrages, he may be killed by anyone simply as a matter of justice. Man who intends to take revenge on him must ask his countrymen if each agrees in opinion that the offender is a bad man deserving death. If so, he may kill man thus condemned, and no one allowed to avenge murder. p. 582.

#### WYANDOTS :

If mother die, children belong to her sister or her nearest female kin, matter being settled by council women of clan. If father die, mother and children cared for by her nearest male relative by a subsequent marriage. p. 64. Wigwam or lodge and all articles of household belong to woman household head. A woman's property inherited by her eldest daughter or nearest female kin. Matter settled by council women. A man's property consists of his clothing, hunting and fishing implements, and usually a small canoe. Except such portion as may be buried with him, it is inherited by his brother or his sister's son. p. 65.

To be a member of the tribe it is necessary to be a member of a clan. To be a member of a clan it is necessary to belong to some family. To belong to a family a person must be born in the family or adopted into the family. p. 60. Seven clans : Deer,



Bear, Highland Turtle (striped), Highland Turtle (black), Mud Turtle, Smooth Large Turtle, Hawk, Beaver, Wolf, Sea Snake, Porcupine. p. 59. There is a body of names belonging to each clan, so that each person's name indicates clan to which he belongs. Names derived from the characteristics, habits, attitudes, or mythological stories connected with clan ancestor. pp. 59-60.

Bear, Deer, and Striped Turtle clans constitute one phratry; Highland Turtle, Black Turtle, and Smooth Large Turtle, another; Hawk, Beaver, Wolf, another. p. 60.

The eleven clans as four phratries constitute tribe. p. 60. The four women councillors of clan chosen by heads of households, themselves being women. No formal election but frequent discussion is had over the matter from time to time, in which a sentiment grows up within clan and throughout tribe that in event of death of any councillor a certain person will take her place. p. 61. These four councillors select a chief of the clan from its male members. He is head of the council. p. 61. Clan councils held frequently from day to day and from week to week, and called by the chief whenever deemed necessary. p. 62. Sometimes a grand council of clan composed of councillors proper and all heads of households and leading men. p. 61. Each clan has its own area for cultivation. Its boundaries settled by tribal council. Women councillors partition clan land among householders. Heads of households responsible for its cultivation, and should this duty be neglected clan council calls responsible parties to account. p. 65. Cultivation communal. Head of household sends her brother or son into the forest or to the stream to bring in game or fish for a feast. Then able-bodied women of clan invited to assist in cultivation of land, and when this work is done a feast is given. Land re-partitioned once in two years. Large canoes made by male members of clan and are clan property. Each clan has a right to service of all its male members in avenging wrongs. p. 65. In case of theft, when prosecutor and prosecuted belong to same clan, trial is before council of clan and from it no appeal. If they belong to different clans, prosecutor through head of his household lays matter before his clan, council of the accused. Thereupon becomes duty of council for accused to investigate facts for themselves and settle matter with council of plaintiff. Failure to do this followed by retaliation in seizing of any property of clan which may be found. p. 66. A man can be



declared an outlaw by his own clan, who thus publish to tribe that they will not defend him in case he is injured by another. But usually outlawry is declared only after trial before tribal council. p. 67. In lowest grade of outlawry, declared that if man shall thereafter continue in commission of similar crimes it will be lawful for any person to kill him; and, if killed, right-fully or wrongfully, his clan will not avenge his death. Outlawry of highest degree makes it duty of any member of tribe who may meet with offender to kill him. p. 68.

Tribal council composed of aggregated clan councils. Composed therefore one-fifth of men and four-fifths of women. Tribal chief chosen by clan chiefs. Sometimes a grand council of tribe composed of council of tribe proper and heads of households and leading men of tribe. p. 61. The military council is composed of all able-bodied men of tribe; military chief chosen by council of Porcupine clan. p. 68. Sachem of tribe selected by men belonging to council of tribe. p. 62. Tribe has right to service of all its male members in war. p. 65.

## LECTURE XIII

### THE PATRIARCHATE

THE original extent of the matriarchal system<sup>1</sup> has been the subject of prolonged controversy, and in connection with alleged survivals of the matriarchate is still a moot question. Whatever may be the genetical relation between the matriarchate and the patriarchate, it is a fact that certain communities have been passing under recent observation from the former to the latter stage, whereas a transition in the contrary sense has not as yet been observed.<sup>2</sup>

The matriarchate in controversy

Indisputable evidences of transition from one system to another are: (1) Dependence of full marital and paternal power upon actual or fictitious payment of a bride-price; (2) the practice of a father purchasing the full right to his offspring from their maternal kin; (3) the practice of a man donating property to his sons during his lifetime in order to thwart the claim of his nephews or maternal relatives to it at his death, or in case this has not been done the occur-

Proof of transition from matriarchate to patriarchate

<sup>1</sup> Note that the term as we use it does not correspond to the notion of *mother-right* (*Mutterrecht*) which involves female supremacy as used by Bachofen and his fellow-controversialists. On the other hand, it more or less corresponds to the same term as used by Dargun and Grosse, although the less definite term *maternal system* comes nearer expressing their concept of *Mutterrecht*; for in spite of their theoretical distinctions between matronymy (*Mutterfolge*) and matriarchate (*Matriarchat*) the two are often confused by them in their use of the term *Mutterrecht*. See note on controversial literature. Likewise p. 248

<sup>2</sup> Professor Boas believes that the Kwakiutl Indians were formerly in a paternal stage, and that their maternal system of descent is an adaptation borrowed from their northern neighbours. *The Social Organisation and the Secret Societies of the Kwakiutl Indians*, in *Smithsonian Report*, 1895, pp. 334-335.

rence of a struggle for his property between his sons and his nephews at his death ; similarly a prescribed distribution of patrimony between offspring and sisters' children ; (4) inheritance of rank—kingly, priestly, etc.—from father, with descent of property in maternal line, or *vice versa* inheritance of property in paternal and of rank in maternal line ; (5) survivals of the avunculate in still other forms.

There are besides these mixed matriarchal and patriarchal forms other practices which are perhaps less readily explained as transition forms. The children may, for example, be divided according to various rules between the families of mother and father. Control of offspring may be divided between maternal and paternal kinsfolk, *e.g.*, between the mother's brother and the father. In matters of inheritance by remote kinsfolk the system may also be partly maternal and partly paternal.

The patriarchal compound family is monogamous or polygynous. Monogamy is due more to poverty than to anything else (polyandry may even exceptionally occur from poverty), and polygyny is an indication, if not always a source, of wealth. The number of wives is therefore distinctly proportionate to social pre-eminence. There is, as a rule, a marked subordination among the wives, concubinage being well developed. A distinction is even made between slave-girls and concubines. The number of *wives*, technically speaking, may be limited, irrespective of rank, while that of concubines or slave-girls is unlimited or prescribed according to rank. Offspring, particularly male offspring, are as a rule greatly desired, and the birth-rate is high. Infanticide, fœti-

Organisation of  
patriarchal com-  
pound family

The monogamy of  
poverty

Concubinage

High birth-rate

Condemnation of  
infanticide, etc.

cide, etc., are condemned, if not punished. These practices may prevail, however, to a considerable extent from a number of motives. Female infanticide may, in particular, be practised. Marital and paternal power is highly developed, although in the case of the wife it may be to a certain extent restrained by a contract with her family, and in the case of both wife and offspring they, with their husband- or father-master, may be primarily subordinate to the head of the patriarchal kin. It is this subordination to the patriarchal kinship head, whether he be husband or father or not, that distinguishes the *patria potestas* of the patriarchal family from the male mastery of the primitive simple family. In the former family, moreover, all members of the household, wives, concubines, slaves, and even clients or guests, occupy more or less the same position as that of offspring. Through the fiction of adoption they fall under the *patria potestas* of the *pater familias*. Lactation lasts as a rule for two years or less. Parental discipline is much more developed than in the matriarchal family. Daughters are married off when nubile. They have little or no choice. Betrothal during the infancy and childhood of both sexes is frequent. The age at marriage of youths varies from eighteen to twenty-four, or even older, but as an immediate result of ancestor-worship, it is frequently more or less required before an arbitrarily fixed age. It is often the duty of the father or paternal kin to procure or aid in procuring a wife for sons or younger male relatives. Marriage by purchase is well developed, the bride-price being as a rule closely stipulated. It may be accompanied, however, by exchange gifts, and a

Prevalence of female  
infanticide  
Marital and paternal  
power

Distinction between  
father right in  
primitive pairing  
and in patriarchal  
family

Fiction of adoption

Lactation

Child-discipline

Age at marriage

Duty of procuring  
wives

Marriage by  
purchase  
Dower and dowry

Divorce	settlement may be made on the bride for her children or for her own benefit in case of divorce or widowhood. Women, however, do not administer property. Divorce is more or less strictly regulated, being allowed only as a rule for stated offences or failings. In case of barrenness or female births only it may be required. The wife's rights in the
Disposal of offspring in divorce	matter are much more limited than the husband's. In case of divorce offspring always remain in the paternal home unless they are at the breast or very young. In this case they may temporarily accompany their mother to her home, sometimes living there at their father's expense.
Corporate responsibility	As in the matriarchal group, the group or the group-head is responsible for the acts of group members, for their debts, fines, etc. The group is called upon to pay composition or ransom for its guilty or captured members. Members frequently are not allowed to leave the group without the latter's consent. Exile from the group is often the severest form of punishment. Lands, houses, cattle, and chattels of various kinds may be owned in common, or, to a certain extent, in severalty. Conditions of production vary greatly under patriarchal organisation. Their differences naturally give rise to differences in family structure. We shall discuss this subject in connection with the particular types of patriarchal organisation which we are soon to consider.
Right of leaving family	
Property	
Subsistence	
Ancestor-worship	Highly developed ancestor-worship is or has been at one time universal among patriarchal peoples.
Phallicism	Among them there are few traces of totemism. Phallic-worship, or the worship of the principle of fertility in nature, is in its influence upon the family the most



important of the forms of nature-worship which always co-exist with ancestor-worship. In developed ancestor-worship, instead of attempting to banish the spirit of the deceased, as in more primitive ghost-exorcism, so to speak, his spirit is called back by ceremonial wailing, and innumerable rites are performed for the sake of his comfort or prosperity. Human beings, wives or slaves, and goods of various kinds, or, in a later stage, imitations of animate or inanimate chattels, are buried or burned with him to insure him service or distinction in his spirit-life. This custom has obviously an important effect upon the accumulation of family capital and upon inheritance, and the substitution of models for actual or living objects or persons is, in this connection, a significant advance in ancestor-worship. Moreover, the deceased is buried within or near the dwelling-place of the living relatives. A portion of the meals of the living may be set aside for him, or libations and food offerings may be made at his tomb at stated periods. He is propitiated at all important family crises. As the dead are dependent upon the living for the performance of their funeral rites and sacrificial observances, marriage itself, as well as marriage according to prescribed conditions, and child begetting and bearing, become religious duties. Marriage ceremonial not infrequently takes on a religious character. Infanticide, abortion, celibacy other than celibacy of a sacerdotal character, and adultery, become sins. The punishment of the adulteress is particularly severe, although in some cases her value as property may guarantee her against punishment by death. Belief in the reincarnation in the family of a deceased ancestor is not uncommon

Features of  
ancestor-worship

Ceremonial wailing

Destruction of  
property at death

Effect on capital

The tomb

Sacrifice

Marriage and repro-  
duction religious  
duties

Fictitious adoption	<p>The name of the deceased is often perpetuated either by giving it to a child in the family or to an adult who, with the name, may assume special obligations of ceremonial observance in relation to the spirit of the deceased. Various forms of fictitious adoption are encouraged, notably the <i>levirate</i> or <i>niyoga</i>, and the <i>appointment of the daughter's son</i>, for the sake of securing a son to continue the family worship. The head of the household is a priest. He may be assisted by his wife, or, in case of polygyny, chief wife and by his sons. The first-born son is, as a rule, the chief continuator of the family worship after the father's death.</p>
Primogeniture	<p>In virtue of his office he may inherit a larger portion of the patrimony than his brothers. At marriage daughters adopt the family worship of their husbands.</p>
Co-operation of house-mother	<p>The co-operation of the chief wife or house-mother in the family cult tends to give her a position of respect and dignity in the family. She may even share in the control of offspring.</p>
Patriarchal house- and village-com- munities Patriarchal family proper	<p>A patriarchal family may form a house- or village-community. A household consisting of a patriarch, his wife or wives, his unmarried daughters, his sons and their wives and children, forms the group usually known as the patriarchal family. If the brothers and their descendants customarily remain together at the death of their parent or common ancestor, the group is frequently referred to as the joint, undivided family.</p>
Joint, undivided family	
Herding peoples	<p>The so-called patriarchal family is found both among pastoral and agricultural peoples. It is particularly characteristic of herders. The herdsman's tribe may be comparatively large, containing from five hundred to several thousand persons; but</p>
The tribe	

the families are as a rule more or less segregated because of the exigencies of pasturage. Tribal organisation, however, is very valuable for the purpose of offence or defence. Land is held in common by the tribe, but families have more or less definite claims of pasture in definite localities. The life is necessarily migratory within given areas. Both agriculture and hunting are minor modes of subsistence. The men are the herders. Women rarely have anything to do with the cattle. As among the higher types of hunters women cultivate the soil and carry on the household work. The subjection of the women is particularly marked. This condition is probably due to their disassociation from herding, the chief source of subsistence. At majority, eighteen to twenty-one, or at marriage, a son may be given a lot of cattle and sheep, thereby becoming partly independent of his father; but as a rule the stock is undivided until the latter's death. There is commonly equal inheritance of patrimony among sons.

The joint undivided family is found among both pastoral and agricultural peoples, although it is far more characteristic of the latter. Stock or land is owned or worked in common by the family group. Theoretically, title to real property may be vested in the village-community or over-lord, and land may be reapportioned from time to time or at stated intervals. When the compound family is itself the proprietor of the land, or when the family property is in cattle, a partition may or may not be provided for. In the latter event it may be carried out only on the death of the father or with his consent and that of the sons during his lifetime. In case of partition the eldest

Land

Migration

Supplementary  
agriculture and  
huntingDivision of labour  
by sex

Inheritance

Joint undivided  
family

Land

Reapportioning

Partition

## Headship

son may receive a larger share than the younger. The eldest son or eldest brother is in some cases the household head, in others the head is appointed by his predecessor or elected from among the older and more competent men. In some cases the head may be deposed for mismanagement or incompetency. His authority may also be limited by a family council.

## Village community

As in the matriarchal organisations, a single patriarchal group may form a village community, or the village may be composed of several patriarchal families whose heads form the village council.

Transition from  
ethnic to civil  
society

In the village community, as elsewhere, the tie of kinship tends to yield to the tie of a common territory. The tribal chief<sup>1</sup> becomes a district chief or king, and usurps such kinship functions as punishment for crimes, protection of widows, orphans, etc., land ownership or distribution, etc. Particularly notable in this transition from ethnic to civil society is the fact that arbitration between different kinfolk groups is one of the earliest functions of these local chiefs<sup>2</sup> or councils, inter-family law being more or less sharply distinguished from law within the family.

Kinship survivals  
in civil societies

Just as we shall see in the following lecture that the developed civilisations of to-day still show traces of the compound patriarchal family, so it is notable that all the earlier historical peoples among whom forms of the compound patriarchal family are found show traces of a sometime wider kinship organisa-

<sup>1</sup> For a suggestive account of the tendency of the primitive medicine-man likewise to take on chiefly or kingly functions, see Frazer, *Lectures on the Early History of the Kingship*, London and New York, 1905, Lectures IV.-V.

<sup>2</sup> See p. .



tion. Endogamous or exogamous restrictions based on the possession of the same family name irrespective of recognised blood-kinship, customary residence of given families together within a given district, the marshalling together of given families for war or administrative purposes, the joint proprietorship of certain families in given forms or places of religious worship or burial, the vesting of ultimate rights of inheritance within certain groups of families, all these customs point to pre-existent kinship solidarity between the families in question.

## NOTE A

## COEXISTENCE OF MATRIARCHATE AND PATRIARCHATE.

Dargun, *Mutterrecht und Vaterrecht*, i., chap. vii.

## THE FAMILY AMONG PASTORAL PEOPLES.

Grosse, *Die Formen der Familie*, etc., chap. vi.

## A SEMI-NOMADIC, PASTORAL, BACHKIR FAMILY.

Le Play, *Les Ouvriers Européens*, Tours and Paris, 1877, ii., chap. i.

## THE FAMILY AMONG AGRICULTURAL PEOPLES.

Grosse, *Die Formen der Familie*, etc., chaps. viii.-ix.

## AGRICULTURAL PATRIARCHAL FAMILIES IN SOUTH AND CENTRAL RUSSIA.

Le Play, *Les Ouvriers Européens*, ii., chaps. ii. and v.

## THE JOINT, UNDIVIDED FAMILY.

Lavelaye, *De la Propriété et de ses formes primitives*, Paris, 1891, chaps. xxix.-xxxii.

Le Play, *L'Organisation de la famille*, pp. 213-294.

## SOUTH SLAVIC HOUSE COMMUNITIES.

Krauss, *Sitte und Brauch der Südslaven*, secs. iv.-viii.

## A SYRIAN HOUSE COMMUNITY.

Le Play, *Les Ouvriers Européens*, ii., chap. viii.



## ANCESTOR-FEAR AND WORSHIP.

Steinmetz, *Ethnologische Studien*, etc., i., 151-250.

Schurtz, *Wertvernichtung durch den Totenkult* in *Zt. f. Socialwissenschaft*, i. (1898), 41-52.

De Groot, *The Religious System of China*, vol. ii.

*Lí Kí*, xxvii., 120-208, xxviii., 40-59, 132-168, 173-209, 363-394.

Hearn, *The Aryan Household*, chaps. ii.-iv.

De Coulanges, *The Ancient City*, Boston, 1901, pp. 15-110.

## ANCESTOR-WORSHIP AND INHERITANCE IN THE PATRIARCHAL FAMILY.

Maine, *Early Law and Custom*, chap. iv.

## SURVIVALS OF TOTEMISM.

Jevons, *An Introduction to the History of Religion*, London and New York, 1896, chap. x.

## THE VILLAGE COMMUNITY.

Baden-Powell, *The Indian Village Community*, pp. 398-423.

Kovalevsky, *Tableau des Origines et de l' Evolution de la Famille et de la Propriété*, Stockholm, 1890, pp. 162-181.

Hildebrand, *Recht und Sitte auf den verschiedenen kultur-stufen*, pp. 57-140.

(Argument that family and not village communities characterised the Germans of Cæsar and Tacitus.)

## RUSSIAN VILLAGE COMMUNITIES.

Lavelaye, *De la Propriété*, etc., chap. ii.

## CLAN SURVIVALS.

Hearn, *The Aryan Household*, pp. 113-136, 453-478.

Seebohm, *The Tribal System in Wales*, London and New York, 1895, pp. 54-110.

Seebohm, *Tribal custom in Anglo-Saxon Law*, London, New York, and Bombay, 1902, chap. xv.

## AMONG SOUTH SLAVS.

Krauss, *Sitte und Brauch der Südslaven*, sec. iii.

## NOTE B

## THE PATRIARCHAL THEORY.

General review of theory, Howard, *A History of Matrimonial Institutions*, i., 9-32.

Primevally the father is absolutely supreme. The Roman *patria potestas* is the type of this paternal authority. Primitive society was made up of an aggregation of families presided over by these male heads, and enlarged by strangers through the fiction of adoption. Maine, *Ancient Law*, pp. 122-138.

Criticisms of Maine's Theory. Spencer, *Principles of Sociology*, i., 686-713.

Examination and alleged refutation of Maine's theory. Polyandry and matronymy were the first forms of marriage and of the reckoning of kinship. McLennan, *The Patriarchal Theory*, p. 355 and *passim*.

The tribe and clan with group marriage and matronymic descent existed before the family, individual and patriarchal. Giraud-Teulon, *Les Origines du Mariage et de la Famille*, Geneva and Paris, 1884, pp. 393, 475, 483.

The clan is always composed of single families. The family never developed from the clan. Grosse, *Die Formen der Familie*, etc., p. 207.

Mother-right is an outcome rather than an antecedent of father-right. Hildebrand, *Recht und Sitte*, etc., pp. 16-22.

In spite of matronymy male power was supreme in the primitive family. Wake, *The Primitive Human Family*, in *J. A. I.*, xi., 3-19.

The maternal (matronymic and matriarchal) system develops before the paternal (patronymic and patriarchal); the argument being geological. There are survivals of the maternal system in the paternal; *e. g.*, *couvade* and widow-inheritance by brothers, but no survivals of the paternal in the maternal system. Tylor, *On a Method*, etc., p. 256.

The maternal (matronymic and matriarchal) system is prior to the paternal. Disintegration of the family from the totem group leads to paternal control. Subdivisions of the totem group become patronymic. Kohler, *Zur Urgeschichte der Ehe* in *Zt. f. vergleichende Rechtswissenschaft*, xii., 239-241.

#### THE EXISTENCE OF MATRONYMY AND MATRIARCHATE AMONG THE ARYANS.

Traces of them exist side by side with the Aryan patri-

archate. Dargun, *Mutterrecht und Vaterrecht*, i., 90-116.

There are evidences of *mother-right* (matronymy and matriarchate) in the customs of medieval witchcraft. Pearson, *The Chances of Death and Other Studies in Evolution*, London and New York, 1897, ii., 1-50.

Alleged avunculate among the Germans is only an incipient recognition of maternal kindred alongside the prevailing paternal system. Feminine right to property is only a dowry right. Mother-right never existed among the Indogermanic peoples. Delbrück, *Das Mutterrecht bei den Indogermanen in Preussische Jahrbücher*, lxxvii. (1895), 14-27.

#### THE ORIGIN OF LAND-OWNERSHIP.

Communal. The principle of private property in land became established only very gradually, and comparatively recently. Lavelaye, *De la Propriété*, etc., pp. 3-4, 342-343.

Communal ownership by kinsmen. Proprietorship does not arise from occupancy. The occupant becomes the owner because all things are presumed to be somebody's property. Maine, *Ancient Law*, pp. 256-272.

It is individual not communal. The habit of *using* a piece of land leads to the idea of the right to *use* it. Dargun, *Ursprung und Entwicklungs-Geschichte des Eigenthums in Zt. f. vergleichende Rechtswissenschaft*, vi, 115.

In view of the multiformity of land ownership practices existing side by side among closely related groups schematism is fallacious in treating the subject of the development of land ownership. Schurtz, *Die Anfänge des Landbesitzes in Zt. f. Sociol.*, iii., (1900), 245-255, 352-361.

#### DISINTEGRATION OF THE CLAN.

When with numerical increase intensive cultivation and with intensive cultivation private property in land develops, the clan organisation, which is based on common ownership of land, begins to disintegrate. The development of industrial occupations through individuals excluded from land-owning scatters the clan group. The juridical and religious features of the clan may persist long after its economic features have disappeared. Its juridical function goes by the board with its political entity. Fi-

nally, the bond of a common religious observance is loosened by the spread of a state religion. . . . The division of labour caused by the development of industry was the death-blow of the clan. Grosse, *Die Formen der Familie*, etc., pp. 207-215.

Due to the rise of the patriarchate. Kautsky, *Die Entstehung der Ehe*, etc., p. 338.

## NOTE C

Make a comparative study of inheritance by brothers (tanistry) instead of by sons. Make a study of the right of testament in relation to changes in systems of inheritance. Of transitions, in the development of social control, from control by kinship groups to that by territorial groups. Study in particular, in connection with the suppression of family law, the custom of differentiating penalties according to whether the crime is committed within or without the kinsfolk group.

## NOTE D

## MELANESIANS :

Motlav: Succession of chieftaincy from father to son. Practically, in devolution of property and handing on of religious or magic rites, a man always puts his son into his own place as far as possible. Thus as chieftaincy was a matter of personal prominence, son would be likely to take rank of father. p. 55. Northern New Hebrides : Similarly a man inherits from father, charms, magic songs, stones, and apparatus, his knowledge of way to approach spiritual beings, as well as his property. These things give him chieftaincy. pp. 56-57. Florida and surrounding Solomon Isls.: Cultivated land thought to be originally cleared by kin division. Portions occupied by hereditary succession, from maternal uncles to nephews, by families within kin division, by an original agreement which has now come to be a right. When a man makes a clearing in the bush or plants fruit-trees, this personally secured property may pass from father to son. A man before his death will direct that his canoe is to go to his son, and he will receive it, otherwise son and nephew will each claim, and stronger will get it. A rich man's money divided among brothers,



nephews, and, if they can get any, his sons, a fruitful source of quarrels. A man's wife, in prospect of his death, would hide a good deal of his money to appropriate it later for herself and sons. Banks' Isl.: Common to make arrangements by which a man's children succeed him with consent of heirs at law, *i. e.*, his sisters' children or his brothers'. Sometimes a man before his death begs his brothers not to disturb his son in his garden. To secure a transaction of this kind, son will put money for redemption of garden upon father's corpse when he is laid out for burial. Legal heirs take the money before witnesses, thereby giving up their right. When a young man makes his home, he builds on property of his kin. Youngest son remains with mother and keeps, after father's death, the house. Personal property—pigs, money, canoes, ornaments, weapons, etc.—goes to the children generally. Pigs will be claimed by deceased's kinsmen, however, unless they are bought off, or unless father has explicitly left them to his children before death. Araga: Everything except what father has given to son before death goes to sister's son. Lepers' Isl.: Real property inherited by sons, personal, by kinsmen, a choice pig and a larger share of other things being given to sister's son. pp. 59-68.

Araga: A firstborn son remains 10 days in house of birth while father's kinsmen bring food to mother; on tenth day, father gives them food and money. They lay upon infant's head mats and strings with which pigs are tied. Father says that he accepts this as a sign that hereafter they will help and feed his son. Banks' Isl.: On birth of firstborn son, a noisy and playful fight arises. Father buys off assailants with payment of money to kin division of mother and son. p. 231.

No tribes. p. 2.

Florida: Each kin division has its peculiar *tindalo*, god, whom they vaguely call their ancestor. p. 132. Saa: When landing on an uninhabited islet or in any danger, natives throw food and call on father, grandfather, and deceased friends. First fruits offered to ghosts of ancestors. Solomon Isls.: Sacrifices offered to ghosts of ancestors as well as of powerful men. pp. 136-139. Aurora Isl.: If a man lose his pig, he will go to grave of a kinsman and put a tuft of croton leaves upon it, saying "give me back my pig." p. 143. Motlav Isl.: Ancestral ghosts invoked for protection on the sea, in starting on a journey. p. 148. Malanta:



Sacred places of sepulture where ancestral ghosts are sacrificed to. p. 177. Saa, Malanta : The body of a great man, of a man much beloved by his son, is hung up in a canoe in son's house. Also very favourite children and sometimes wives. When wife is finally taken out to burial ground her jaw or one of her teeth will be kept in the house as a memorial. pp. 261-262. Banks' Isl.: Water and roasted yams placed on grave. Also dead pigs to accompany to ghost-land. Ureparapara : Five days after death ghost is driven away by beating together charmed stones and bamboos, etc. Motlav : Ghost driven away when deceased was afflicted with ulcers and sores. Death-feasts in all the isles. At ordinary meals when oven is opened, a bit of food is put aside for dead, with words "This is for you, let our oven be well cooked." Death meals also eaten every tenth day to the hundredth or thousandth. pp. 261-264, 268, 270-272, 282.

Duty of groom's relatives to help him with bride-price. p. 237.

#### EWÉ-SPEAKING PEOPLES :

Order of succession to property is eldest brother, sister's eldest son, etc. Eldest brother head of family. p. 207.

Family members have a right to be fed and clothed by family head, who has a right to pawn and, in some cases, sell them. Family collectively responsible for crimes committed by members. Each member assessable for compensation, and each receives a share of compensation for a crime or injury against any member. p. 208. If a wife be involved in litigation she involves her uterine family but not her husband. If a family bury a deceased member, they become responsible for all his debts. To refuse to bury is considered a disgraceful evasion of family responsibility. p. 216. Land belongs to the tribe. p. 209. But it is portioned out to families who have undisturbed usufruct of it. p. 217.

In upper classes in Dahomi, customary to exhume skulls of family dead after a number of years and place them in earthen pots in a corner of the house. Dead appealed to for advice or assistance before these skulls. Sacrifices of men, sheep, rum, water, etc., made on graves of deceased kings of Dahomi. pp. 111-112. At death, food and drink placed by the corpse, which is buried in the earthen floor of house. Usually water, rum, or blood poured

on grave. Believed that soul lingers near remains until funeral rites are performed. pp. 158-159.

In cases of homicide, theft, rape, assault, etc., it is the family of person who has suffered that can alone demand and exact satisfaction. No one else has a right to interfere. Treason and witchcraft almost only offences that the state represented by tribal or village chief takes cognisance of. Chief called in to arbitrate when families cannot agree on reparation. Injured family assesses its damages. No fixed scale. Family itself deals with its erring member. (*The Yoruba-Speaking Peoples*, pp. 300-301.)

#### TSHI-SPEAKING PEOPLES:

In default of nephews, son inherits. Lacking a son, principal native-born slave succeeds to property. In Fanti slave succeeds to exclusion of son, who inherits only property of his mother. p. 298.

Head of a family has right, with certain exceptions, to pawn any of his relatives. p. 294. Family of a deceased member in debt sometimes makes a present to the chiefs and delivers corpse to them for burial. This is a legal discharge of their responsibility to bury and pay the debts, but considered a highly disgraceful step. pp. 299-300. Death of culprit and death or enslavement of his relatives the punishment for procuring death of a person through witchcraft. p. 203. Land attached to stool of the king, and in each province to stool of the provincial chief, subject to king, by whom it is distributed among inhabitants of towns and villages. pp. 298-299.

Tutelary family deities obtained from superior local deities through religious rites performed by a priest. Object in which family god is supposed to dwell kept by head of family. When a family splits up, new tutelary gods obtained for the separating sections. A deceased ancestor may also appear in a dream and direct his relation to dwelling place of the *Bohsum*. The priest is then consulted. Family god protects family from sickness and misfortune. On day or days sacred to family god, no work or travelling may take place. Eggs, fowls, and palm oil usual offerings during this festival. p. 89-94.

At death all the most valuable articles belonging to deceased placed around corpse, and dish preferred in life placed before it. Among southern tribes, body buried within house. This prac-

tice now prohibited on coast. Coffin contains an outfit for departed spirit of silk cloths, pipes, sandals, etc., amounting in value in case of wealthy persons to £200 or £300. Rum, food, and tobacco also placed in coffin. Sacrifices of food, sheep, or bullocks made on grave. Food and palm-wine placed daily on grave for some months. pp. 238-242.

In family divisions priest usually announces that it is the will of original family god that departing members should hereafter abstain from a certain food in his remembrance. pp. 212-213. Families also have animal totems. Flesh of a totem animal may not be eaten by family. The only tribute paid to the animal. pp. 204-207.

#### YORUBA-SPEAKING PEOPLES :

Sons inherit father's property. Lacking sons, a man's brothers, and lacking brothers, sisters inherit. Succession to property entails obligation of defraying debts of deceased. p. 177. Usufruct of land inherited. Land vested in chief and belongs to community collectively. Chief distributes it. p. 188. Houses belong to family and cannot be sold without consent of whole. p. 189. Property, houses, family gold ornaments, insignia, stools, etc., vested in households, not in families. p. 99. No collective family responsibility. Head of family cannot pawn younger members and latter cannot claim to be supported by him. p. 177. Only minor offences left to family to deal with. Theft punished by state. Punishment falls upon guilty individual, not upon kinship group. p. 99.

Temples of tutelary deities of families or households near house-door or in yard. p. 99. Egungun is a disguised man supposed to have returned from Dead-Land. After a funeral he visits relatives, is feasted by them, and brings them news of deceased. pp. 107-109. Food, drink, cowries, etc., placed in grave. A goat sacrificed. Offerings and prayers made to dead from time to time. Sometimes deceased's skull exhumed and placed in a small temple, where offerings are made to it. p. 137. At death priest sprinkles room, corpse, and spectators with holy water, and invokes deceased to leave house on his journey to Dead-Land as soon as funeral rites are performed. pp. 155-156.

#### THOMPSON RIVER INDIANS :

In domestic affairs each male member of age had a right to

express his opinion or give his advice, although in most cases father's or eldest son's advice taken. Father and eldest son seem to have been looked upon as highest authorities, although custom required that they should not do anything of importance to family without first consulting its other male members. p. 292. Each family had certain names, and no one but members of family permitted to use them. p. 290.

Some villages very small, consisting of two or three families, while others are large and contain about 100 or more inhabitants. p. 174. The winter houses, lived in from December to March, were semi-subterranean huts, inhabited by groups of families related to each other, who, although scattered during hunting and fishing season, dwelt together during winter. These dwellings rarely number more than three or four at one place, and often there was but a single house. A house accommodated from 15 to 30 persons. p. 192. A person wishing to build a winter house asked all his neighbours to assist. Frequently 20 or 30 people came, so that building was sometimes completed in a single day. They were given food by owner of house, whose relatives contributed from their store of provisions. p. 192. Brisket and skin considered share of man who shot deer, while rest of animal was equally divided among the other hunters. p. 294.

In 1858 entire tribe probably numbered at least 5000. p. 175. No hereditary chiefs, rank of each person determined by his wealth and personal qualities. A war party had a war chief, who was the one considered by his companions best qualified to act as leader. In religious ceremonies a capable man called "chief" of ceremonies and dances. Orators possessed great influence, some of them who were wise and wealthy looked upon as chief men of certain large districts. The people negotiated through them with strangers. p. 289. Fact that a man was the son of a chief, of a man noted for wealth, wisdom, oratorical powers, or prowess in war, gained him a certain amount of popularity. If, however, he failed to possess or attain the necessary qualifications, he was not called "chief," nor would he be considered in any way different from mass of people. Nevertheless chieftaincy has descended in some instances from father to son for several generations. p. 289. Land looked upon as neither individual nor family property. No particular hunting



grounds peculiar to, or sole property of, certain families or bands. Each band had their usual hunting places, naturally those parts of country nearest their respective homes, but Indians from various villages or divisions of tribe frequently hunted in each others' hunting grounds, and were not considered intruders. Hunting territory seems to have been considered common property of whole tribe. If a person not related to a Thompson Indian were caught hunting, trapping, or gathering bark or roots within the recognised limits of tribal territory, he was liable to forfeit his life. Salmon-fishing stations and deer fences were exceptions; looked upon as property of individual who built station or maintained fence. Members of one division of tribe not allowed to build deer fences on territory of another division. pp. 293-294.

Deer fences, fishing stations, and eagles' eyries inherited by all male children, eldest having right of dividing and taking his choice. Sometimes these places used by all the sons in common, until some died, survivor claiming all, and his sons inheriting from him. If a man died without sons, nearest male relative took his hunting places. If deceased had no near male relatives, his daughters and sons-in-law inherited. p. 294. Property of a deceased father divided among his sons, daughters also sometimes getting a share. Property also often divided among all relatives of age, male and female, cousins included; nearest kin receiving largest shares, and males taking precedence of females; in some cases taken by nearest male relatives, to exclusion of all others. Sons inheriting property of father had to provide for mother. p. 293. Only a son "strong in medicine" would ever take possession of deceased father's medicine bag, weapons, etc. p. 328.

Each group or family had its own burial ground. p. 330. Weapons, tools, personal ornaments, and "medicine bag" or guardian spirit of deceased either buried in grave or hung up near it. Weapons after being broken or otherwise damaged also sometimes hung up in a tree near by, and occasionally some of deceased's clothes and fishing utensils. Deer fence of a deceased person generally burned, a new one being erected by his heir in the same place. If deceased had dogs or horses, some of them killed and their skins hung up. If there were



slaves, some of them either killed at grave and their bodies thrown in, or they were forced into bottom of grave and buried alive. Their master's corpse placed on top of them. p. 328. Among Spences Bridge band male relatives of a deceased adult took to the war path and slaughtered one or more enemies, generally Llooet. If a stranger were among them some one might kill him, and perhaps bury his body as a funeral offering within or over grave of one of his relatives who had recently died. p. 335. Lodge in which an adult person died burned. Winter house purified; but if two or more deaths occurred in it at same time or in immediate succession then house invariably burned. Most of household utensils of a deceased person also burned. Nobody could with impunity take possession of bow and arrows, long leggings, and moccasins of a dead man. If any one appropriated first of these, dead man would come back for them, and in taking them away would also take the soul of man possessing them, thereby causing his speedy death. If either of other two were appropriated, one who took them would be visited by a sickness which would cause his feet and legs to swell enormously. Not safe, except for a person who has a strong guardian spirit, to smoke out of pipe of a man who has recently died. The tobacco will burn up in it faster than usual. A sign that deceased wishes the pipe. pp. 331-332. In some graves were wooden figures carved as nearly as possible in likeness of deceased person, whether man or woman. p. 329. Guns and other things slung around their shoulders; and they were frequently dressed in clothes, and clothes renewed when they became worn. On these occasions a feast was generally given. These figures were intended to keep a dead relative fresh in memory of living, to show respect for him, and to show that dead had living relatives who were above the common people as to wealth, and able always to renew clothes of figure. p. 330. Baskets for carrying roots, berries, etc., of a deceased woman hung up near her grave or some part of mountain which she had frequented. Basket always damaged first. p. 328. Wealthy Indians opened grave of a relative a year or two after death, and occasionally in succeeding years. Bones gathered up each time, and put in a new skin robe or blanket, after being carefully wiped clean. Witnesses feasted by relatives. p. 330.

On many graves canoe of deceased placed bottom side up. Over most graves were erected conical huts. p. 329. If a man's traps or snares were desired by relatives, they were hung up in a tree a long time before being used. p. 332. Among lower Thompsons a burial box belongs to a family or a certain group of families, and many bodies placed in same box. Permitted to remove an article of clothing, etc., hung up on poles and grave figures around boxes provided it was replaced by some other similar article, although inferior in quality. p. 335. After burial deceased asked to take pity on widow or widower, and not to trouble him or her. Some food was often thrown on ground near grave to be used by deceased while visiting his grave, and that he might not visit house in search of food, causing sickness to the people. p. 329. A string of deer hoofs with a short line attached hung across inside of winter house to hinder ghost from entering. p. 332. Burial grounds were at some distance from village, because they considered graveyards uncanny places to pass at night. p. 330. After a death people generally moved camp to a distance for some time. Name of a person recently deceased must not be mentioned. p. 332.

Relatives of a person killed by a member of some other tribe had to avenge his death by a war expedition against offending tribe. If they failed to do so, called "women." Old scores sometimes paid off after lapse of ten or twenty years. Duty of members of tribe to avenge death of those of its members whose blood relations were unable to do so. p. 290.

No totems, except at Spuzzum, where two families who were descendants of members of coast tribes claimed totems of their ancestors. p. 290.

#### KABYLES :

Akbil, etc. Whoever agrees with an unrelated stranger to leave him his property if he die first, and reciprocally to receive former's property if he outlive him, fined 5 reals. Agreement is void. iii., 367. Ait Yahia. In a sale of real estate near relatives of owner have first right to purchase. iii., 386.

Vengeance for murder, *rek'ba*, may fall upon any member of family of murderer. Any relative of murdered man may be called upon to revenge his murder. Compensation money some-

times paid, but practice is condemned by public opinion. iii., 60-62. Aït Ameur. Murderer, his son, or his heirs alone responsible for blood debt, which is thus transmitted with property. iii., 70. Principle of individual responsibility beginning to develop among some tribes. iii., 396. Cheurfa, etc. Reprisal for murder may be taken only on murderer himself. iii., 336. Discretionary power of *Kharouba* to punish crimes committed within its group limited by certain exceptions, notably in case of pregnancy outside of marriage, voluntary incest (a religious crime), and murder of a relative when succession to property is the motive. In two first cases a family may kill guilty member, otherwise they will be killed by village council and relatives fined. For third crime certain villages have suppressed rights of *Kharouba* altogether, and decreed death by stoning or perpetual exile for murderer; other villages merely sentence him to banishment for a period. All prevent his inheriting property of murdered man, and almost all confiscate his own property. iii., 101-105. Aït Kani. If people living in a family association strike one another, they are not subject to fine. If they separate, they pay like others. iii., 423. Cheurfa, etc. He who strikes with stone or stick his elder brother or uncle, fined 1 real. iii., 333. Aït Ousammer, etc. He who strikes the wife of his brother, fined 1 real if woman complain. Whereas for striking wife of another, fine is 10 reals. iii., 379.

Aït Fraouçen. If a woman has near relatives she may not name any one to give her away in marriage and receive in return the *thâmamth*. iii., 389. Aït Bon Chaïb. An orphan girl who has several uncles may designate one to receive her *thâmamth*, but he must then provide for all her wants and expenditures. If she complains against him, he is fined 50 reals. iii., 431. Aït Khalifa. A man anticipating his decease may not name any one but a relative as a guardian of his children. A man about to set forth for Mecca may appoint a non-relative to watch over a repudiated wife. If his wife is not repudiated he may appoint only a relative ii., 401. If a man die and leave a wife and children, his nearest relative is children's guardian until their majority. iii., 384. Aït Aïssa. No one may be the guardian of an orphan but a near relative. If there are no near relatives, it is a man of the *Kharouba*. iii., 405.

Aït Ameur, etc. If a man die without male children, village council entitled to receive 20 reals. iii., 394. Father of bride and of bridegroom each pay 1 real to village council. iii., 384. Aït Ousammer. On marriage of a daughter to a stranger, father will pay 4 reals to village council. If council entertain marriage guests on this occasion, he will pay 8 reals. ii., 378. A relative non-resident in village excluded from inheriting property. If deceased has no resident heirs village council appropriates property. iii., 383. Aït Khalifa. If a woman become widowed or repudiated, she has a right to live in her father's house and on his patrimony. If a foreign woman marry into tribe, she may not inherit from her father. "We do not allow our tribal property to pass over to foreigners through female inheritance, nor do we wish to have property of foreigners come into our possession through that source." iii., 400. Aït Aïssa. He who gives a woman in marriage without the presence of village notables, fined 2 *douros*. iii., 404. Aït El-Ader. A marriage is valid only when it has been celebrated by a marabout in presence of people of village. iii., 407. Aït H'Assam. He who marries without witnesses pays a fine of 10 reals and contract is void. iii., 436. Cheurfa, etc. He who buys and he who sells or mortgages property of an orphan, fined 20 reals. iii., 329.

#### ANCIENT HEBREWS :

And Abraham gave all that he had unto Isaac. Unto the sons of his concubines he gave gifts. Gen. xxv., 5-6. Esau, the firstborn of twins, sells to Jacob, his younger brother, his birthright. *Ib.* xxv., 31-34. Joseph brings his sons to Jacob his father to bless. Jacob places his right hand upon Ephraim's, the younger son's, head. And Joseph said, Not so, my father: for this is the firstborn; put thy right hand upon his head. *Ib.* xlviii., 17-18. If a man have two wives, one beloved and another hated, . . . and if the firstborn son be hers that was hated: then it shall be, when he maketh his sons to inherit that which he hath, that he may not make the son of the beloved firstborn before the son of the hated, which is indeed the firstborn: but he shall acknowledge the son of the hated for the firstborn: by giving him a double portion of all that he hath: for he is the beginning of his strength; the right of the firstborn is his. Deut. xxi., 15-17. And the Lord spake unto Moses, saying, If a man die, and have no son, then ye shall



cause his inheritance to pass unto his daughter. And if he have no daughter, then ye shall give his inheritance unto his brethren. And if he have no brethren, then ye shall give his inheritance unto his father's brethren. And if his father have no brethren, then ye shall give his inheritance unto his kinsman that is next to him of his family, and he shall possess it. Numb. xxvii., 1-11.

The father shall not be put to death for the children, neither shall the children be put to death for the father: every man shall be put to death for his own sin. Deut. xxiv., 16. Joab and Abishai, his brother, slew Abner because he had slain their brother Asahel. They smote him, too, under the fifth rib, just as he had slain Asahel. 2 Sam. iii., 27, 30. If any man purposely kill his neighbour, then the elders of his city shall send and fetch him thence, and deliver him into the hand of the avenger of blood, that he may die. Deut. xix., 11-12.

David said that there was a yearly sacrifice for all his family. 1 Sam. xx., 6.

Ye shall not afflict any widow, or fatherless child. If thou afflict them in any wise and they cry at all unto me, I will surely hear them cry; and my wrath shall wax hot, and I will kill you with the sword; and your wives shall be widows, and your children fatherless. Ex. xxii., 22-24.

#### ANCIENT HINDUS :

Impurity on account of a death is common to all Sapindas. v., 62. If a punishment falls not on the offender himself, it falls on his sons, if not on the sons, at least on his grandsons. iv., 173.

A monthly funeral offering must be made by householders to the manes. Ancestors are satisfied for one month with sesamum grains, rice, barley, water, roots, fruits, etc. ; for two months with fish ; three months with gazelle meat ; four with mutton ; five with birds' flesh ; six with kids' flesh ; seven with spotted deer ; eight with black antelope ; nine with Ruru deer ; ten with boars and buffaloes ; eleven with hares and tortoises ; one year with cow-milk and milk-rice ; twelve years with white goat ; the vegetable Kâlasâka, the fish Mahâsalka, rhinoceros, red goat, hermits' food, food mixed with honey on 13th lunar day, etc., procure endless satisfaction. iii., 123-286. By giving false evidence in regard to small cattle, a man destroys 5 relatives ; to kine, 10 ; to horses, 100 ; to men, 1000 ; to gold, the born and the unborn ; to



land, the carnal enjoyment of women, and to gems, everything. viii., 97-100. The son of a wife wedded by Brâhma rite, if he performs meritorious acts, liberates from sin 10 ancestors, 10 descendants ; and himself as the 21st; of a wife wedded by Daiva rite, 7 ancestors and 7 descendants ; of one by Ârsha rite, 3 ancestors and 3 descendants; of one by Ka rite, 6 in either ascending or descending line. From these blameless marriages blameless children are born ; from the remaining four blamable marriages blamable sons who are cruel, liars, and haters of the sacred law. iii., 37-42.

The mother is a thousand times more venerable than the father. ii., 145. Towards a paternal and maternal aunt and an elder sister, one must behave as towards one's mother, but the mother is the more venerable. ii., 133.

A father obtains immortality thro' his eldest son who is begotten by the fulfilment of the law ; all the rest they consider the offspring of desire. A man owes the birth of a son as a debt to his ancestors. ix., 106-107.

After the death of father and mother the brothers may divide the paternal and maternal estate in equal shares ; for they have no power over it while the parents live. (Commentary: The father's estate is to be divided after his death, the mother's after her death.) The division may take place if father turns ascetic or during parents' lifetime with their consent. The eldest son on whom the debt to the manes falls may alone take the whole paternal estate. If partition is made, the eldest son shall have an additional share of one twentieth of the estate, and the best of all chattels, the middlemost sons half of that, and the youngest one fourth. If the brothers are equally skilled in their occupations there are no additional shares, some trifle only shall be given to the eldest as a token of respect. ix., 104-125. In case of doubt how the division shall be made, in case the younger son is born of the elder wife, and the elder son of the younger wife, the son of the former shall receive as his additional share one bull, the next best bulls shall belong to those who are inferior on account of their mothers. The eldest son of the eldest wife shall receive 15 cows and a bull, the other sons according to the seniority of their mothers. Seniority is according to birth. No seniority in right of the mother exists among sons born of

mothers of equal caste. ix., 122-125. Not brothers, nor fathers, but sons take the paternal estate. ix., 185. One's elder brother must be considered as one's father. iv., 184. If the eldest brother take the whole paternal estate the others shall live under him just as they lived under their father. He must then support his younger brothers. If he behave as an eldest brother ought to do, he must be treated like a mother and like a father. If he is unworthy, he must yet be treated like a kinsman. Separation is meritorious, for by dividing each brother gains spiritual merit. ix., 105-111.

A king must enquire into the laws of families and settle the peculiar law of each. viii., 41. Whatever may have been practised by the virtuous, that he shall establish as law if it be not opposed to the customs of families. viii., 46. The king shall protect the inherited and other property of a minor. In like manner care must be taken of barren women, of those who have no sons, of those whose family is extinct, of wives and widows faithful to their lords, and of women afflicted with diseases. A righteous king must punish like thieves those relatives who appropriate the property of such females during their lifetime. viii., 27-29. Neither a father, nor a mother, nor a wife, nor a son, must be left unpunished by a king, if they do not keep within their duty. viii., 335.

#### ANCIENT CHINESE :

When a mourner has assumed the sackcloth for a father, for three days he abstains from food ; for a mother, for two days. xxviii., 386. Asked about the funeral precedence in the case of both parents dying at the same time, Confucius said "The rule is that the burying of the less important (mother) should have the precedence, and that of the more important (father) follow, while the offerings to them are set down in the opposite order. xxvii., 315.

With the enemy who has slain his father, one should not live under the same heaven. With the enemy who has slain his brother, one should never have his sword to seek to deal vengeance. xxvii., 92. How should one do in the case of a man who has slain one of his paternal cousins? Confucius replies : "He should not take the lead in the avenging. If he whom it chiefly concerns is able to do that, he should support him from behind, with his weapon in his hand." xxvii., 92.

The mourning for parents is taken away at the end of three years, but only its external symbols, the mourning for brothers at the end of one year and also internally. xxviii., 154. When a father has just died, the son should appear quite overcome, and as if he were at his wit's end; when the corpse has been put into the coffin, he should cast quick and sorrowful glances around, as if he were seeking for something and could not find it; when the interment has taken place, he should look alarmed and restless, as if he were looking for some one who does not arrive; at the end of the first year's mourning he should look sad and disappointed; and at the end of the second year's he should have a vague and unreliant look. xxvii., 129. Children may not marry, even when betrothed, during the mourning period for parents. xxvii., 320. Although his parents be dead, when a son is inclined to do what is good, he should think that he will thereby transmit the good name of his parents, and carry his wish into effect. When he is inclined to do what is not good, he should think that he will thereby bring disgrace on the name of his parents and in no wise carry his wish into effect. xxvii., 450-458. When his father died, he could not bear to read his books; the touch of his hand seemed still to be on them. When his mother died, he could not bear to drink from the cups and bowls that she had used; the breath of her mouth seemed still to be on them. xxvii., 24. Confucius said: "In dealing with the dead, if we treat them as if they were entirely dead, that would show a want of affection, and should not be done; or, if we treat them as if they were entirely alive, that would show a want of wisdom, and should not be done." On this account the vessels of bamboo used in connection with the burial of the dead are not fit for actual use; those of earthenware cannot be used to wash in; those of wood are incapable of being carved; the lutes are strung, but not evenly; the pandean pipes are complete, but not in tune; the bells and musical stones are there, but they have no stands. They are called vessels in the eye of fancy; that is, the dead are thus treated as if they were spiritual intelligences. xxvii., 148. From of old there were (referring to the vessels in imagination) the carriages of clay and the figures of straw. . . . Confucius said that the making of the straw figures was good and that the making of the wooden automaton was not benevolent. Was there not a

danger of its leading to the use of living men? xxvii., 173. Immediately after death, the dried flesh and pickled meats are set out by the side of the corpse. When the interment is about to take place, these are the things sent and offered at the grave; and after the interment, there is the food presented in the sacrifices of repose. The dead have never been seen to partake of these things. But from the highest ages to the present they have never been neglected; all to cause men not to revolt from their dead. xxvii., 177-178. Khan-Zze-Kü having died in Wei, his wife and the principal officer of the family consulted together about burying some living persons follow him. When they had decided to do so, his brother, Khan-Zze-Khang, arrived, and when they informed him about their plan, saying, "When the master was ill, he was far away, and there was no provision for his nourishment in the lower world; let us bury some persons alive to supply it." Zze-Khang said, "To bury living persons for the sake of the dead is contrary to what is proper. Nevertheless, in the event of his being ill, and requiring to be nourished, who are so fit for that purpose as his wife and steward?" On this the proposal was not carried into effect. xxvii., 181-182. The king made for himself seven ancestral temples, with a raised altar and the surrounding area for each. The temples were his father's; his grandfather's; his great-grandfather's; his great-great-grandfather's; and the temple of his high ancestor. At all of these a sacrifice was offered every month. The temples of the more remote ancestors formed the receptacles for the tablets as they were displaced; they were two, and at these only the seasonal sacrifices were offered. For the removed tablet of one more remote, an altar was raised and its corresponding area; and on occasions of prayer at this altar and area, a sacrifice was offered. In the case of an ancestor still more remote, he was left in his ghostly state. A feudal prince had five ancestral temples. A great officer had three; an officer of the highest grade had two; an officer in charge merely of one department had one. The mass of ordinary officers and the common people had no ancestral temple. Their dead were left in their ghostly state, to have offerings presented to them in the back apartment, as occasion required. xxviii., 204-206. It is by sacrifice that the nourishment of parents is followed up and filial duty to them perpetuated. In



three ways is a filial son's service of his parents shown: while they are alive, by nourishing them; when they are dead, by all the rites of mourning; and when the mourning is over by sacrificing to them. xxviii., 237-238. In presenting the sacrifice of repose in the ancestral temple, the son offered it to his parent in his disembodied state, hoping that his shade would peradventure return and enjoy it. When he came back to the house from completing the grave, he did not venture to occupy his chamber, but dwelt in the mourning shed, lamenting that his parent was now outside. He slept on the rushes, with a clod for his pillow, lamenting that his parent was in the ground. Therefore he wailed and wept, without regard to time; he endured the toil and grief for three years. xxviii., 377.

At all mourning rites in a household, if the father were alive, he acted as presiding mourner; if he were dead, and brothers lived together in the house, each presided at the mourning for one of his own family circle. If two brothers were equally related to the deceased for whom rites were necessary, the eldest presided at these rites; if they were not equally related, the one most nearly so presided. xxviii., 373. Primogeniture is observed. xxvii., 120.

Eldest cousins in the legitimate line of descent and their brothers should do reverence to the son, who is the representative chief of the family, and his wife. Though they may be richer and higher in official rank than he, they should not presume to enter his house with the demonstrations of their wealth and dignity. Although they may have in attendance many chariots and footmen they should stop outside, and enter it in more simple style with a few followers. If to any of the younger cousins there have been given vessels, robes, furs, coverlets, carriages, and horses, he must offer the best of them to his chief, and then use those that are inferior to this himself. If what he should thus offer be not proper for the chief, he will not presume to enter with it at his gate, not daring to appear with his wealth and dignity, to be above him who is the head of all the clan with its uncles and elder cousins. A wealthy cousin should prepare two victims and present the better of them to his chief. He and his wife should together, after self-purification, reverently assist at his sacrifice in the ancestral temple. When the business of that is



over, they may venture to offer their own private sacrifice. xxvii., 458-459. Members of the same surname were united together in the various ramifications of their kinship, under the Heads of their various branches. xxviii., 62. There was the great Honoured Head whose tablet was not removed from the ancestral temple for a hundred generations. There were the smaller Honoured Heads whose tablets were removed after five generations. They were the ancestors of a line. xxviii., 65.

#### ANCIENT ROMANS :

Let no dead bodies be interred or buried within the city. Regulations forbidding lavish expenditure in funerals (and limiting the burial or burning of the dead) in more than three mourning robes (with purple bands). Not more than ten flute players are to be hired. Let not the women disfigure their faces or indulge in ostentatious lamentation. The bones of a deceased person are not to be collected for the purpose of a subsequent funeral. All funeral potations, costly be-sprinklings of the funeral pile, long rows of crowns, or incense vessels borne before the corpse, several funerals or biers for one person, the throwing in of gold with the body are forbidden. Table X.

For the frightful crime of parricide, (hastening the death of an ascendant or child or any other relation whose murder is included under the term parricide) there is no usual penalty ; the perpetrator and instigator or accomplice are sewn up in a leathern sack, with a dog, a cock, a viper, and an ape, and thrown into the neighbouring sea or river "so that during life he may begin to want the use of the elements, and that the air may be withdrawn from him whilst living and the earth when he is dead." *J.* iv., xviii., § 6.

## LECTURE XIV

### THE MODERN SIMPLE FAMILY

TRANSITIONS from matriarchal as well as from patriarchal to individual family organisation are to be observed, but the latter type of transition is by far the more usual, and for a study of the simple family of civilisation the more significant.

Transition from compound to modern simple family

The question of the passing of the Aryan peoples through the matriarchal stage has been and still is the subject of controversy.<sup>1</sup> Whatever the interpretation given to alleged survivals of prehistoric periods may point to historically, the Aryans have always lived under patriarchal or individual family organisation; and there are many traces of the transition from the former to the latter type of organisation in the modern simple family.

Aryan transition

Although in this family descent is traced through both parents, offspring take, as a rule, their father's name and, where a noble class exists, his title. In the control of offspring, the father or the paternal kindred have commonly superior rights and heavier obligations than those of the mother or maternal kindred. The right of custody and the obligation to support and educate commonly attach to the father in preference to the mother, either in marriage or under circumstances of separation. The mother, to be sure, may have primacy over the paternal kindred; but

Patriarchal survivals in simple family descent

Guardianship

<sup>1</sup> See pp. 307-8.

Parental consent to marriage

in the death of both parents the right of guardianship lies with the paternal instead of the maternal kindred. Again, among some peoples parental consent is necessary for the marriage of offspring to a late age, twenty-five or even thirty. The *age of consent* is in almost all cases earlier than the legal age at marriage.

Economic disabilities of married women and minors

Many economic disabilities in independent wage-earning and in independent inheritance and holding of property likewise attach to married women and to minors. The product of the wife's industry still belongs, for example, to the matrimonial community in some of the states where the community system prevails. Even where the principle of separate ownership is recognised, inherited forms of marital administration and usufruct over dotal and other forms of property may persist. In succession to matrimonial property, the husband's share in the estate of his deceased wife may be larger than the wife's share in the estate of her deceased husband. On the other hand, where the principle of individual ownership is well established for both husband and wife, special protection for the wife, dating back to the earlier system of exclusive marital property rights, may persist. The husband may be responsible for the support of his wife during marriage, and, where she has brought the action of divorce, after separation (alimony). He may be primarily responsible for the household expenses, for the support of minor offspring, etc.

Discriminations in favour of wife

Juridical incapacities

The contractual capacity of married women is still in many European countries and in parts of the United States partly unrecognised. A married woman may not be allowed to give, alienate, pledge, or acquire property without the authorisation of her

husband, or, where this rule begins to be modified, of the court, or she may be free to contract only for her separate property. Again contract for her personal services may be subject to marital authorisation. Her husband may be able to invalidate contracts already made or only to abrogate future acts of the kind. Incapacity to sue and be sued is an outcome of general contractual incapacity. Where contractual capacity is in general recognised, special restrictions upon the power to answer for the liability of another person may exist.<sup>1</sup>

Parents are usually still entitled to the earnings of their minor offspring; and in the lower economic classes of most countries child labour for the benefit of parents is customary. In the higher economic classes parental ownership finds expression, on the other hand, in shutting unmarried daughters out from productive activity.

Child labour

Lack of chastity in unmarried and of conjugal fidelity in married men are far from being as severely condemned as such offences among women. Among few modern nations has the right to divorce become fully reciprocal. Among all nations the husband is still recognised as the legal head of the household administration. Finally, the subordination of the wife to the husband in many ways which are not a concern of law is prescribed by religious and secular public opinion.<sup>2</sup>

Chastity and  
conjugal fidelity

Right to divorce

General subordina-  
tion of women in  
family

<sup>1</sup> Special studies should be made of the sources of these modern patriarchal survivals. The subjection of married women, for example, is due to canon and not to Roman law.

<sup>2</sup> This review covers only the most striking patriarchal survivals in the modern family. In the following description of the latter further patriarchal traces will be recognised.



Bearing in mind the influence of prior patriarchal systems upon the modern family, likewise bearing in mind that modern civilisations are the most heterogeneous, culturally and economically, of all societies, and therefore that the family with other forms of social organisation is subject to innumerable variations of type in the same civilisation, let us review the main features of the typical modern simple family.

Characters of modern simple family

Monogamy

Marriage is monogamous. Bigyny when contracted under legal formality is punished by imprisonment. When entered into without legal formality, it is, as a rule, severely condemned by public opinion, and is almost universally a cause for divorce. Adultery is thought of as a wrong that can be committed against a wife as well as against a husband. Biandry, to use a parallel term, is similarly treated, although it is even more harshly condemned by public opinion. (An interesting survival of patriarchal marital power in this connection is the fact that the husband who is cognizant and tolerant of biandry is much more severely condemned than the wife who is cognizant and tolerant of bigyny.) Similarly, acts of temporary non-conjugal sexual intercourse are more severely condemned in the wife than in the husband. Lack of conjugal fidelity in married men is more condemned than lack of chastity in unmarried men. In many civilisations the latter is, in fact, rarely condemned at all. Recently among Anglo-Saxons a slight tendency has developed among marriageable girls to require chastity of suitors. The prostitute class is, nevertheless, on the increase in all civilisations. Increasing tendencies to late marriage and celibacy are among the chief causes of this increase. There is a tendency for the segregation of this

Exaction of chastity of unmarried men

Increase of prostitution

Due partly to increasing tendency to late marriage or celibacy

class to become less and less marked. In all civilisations divorce is also increasing. A large majority of divorces are obtained by women. Legal causes for divorce tend to multiply. It is notable that as yet the existence of offspring is rarely taken into consideration, legally at any rate, in questions of divorce.<sup>1</sup> There is, however, a tendency to give the custody of offspring to the parent who will be the better educator, and it is frequently provided that such custody may be forfeited through misconduct. Where legal divorce is prohibited or difficult to procure because of legal restrictions, the cost of legal procedure or religious prejudice, separations legal (limited divorce or divorce *a mensa et thoro*) and non-legal (by mutual consent or as an act of desertion) are the substitutes in vogue. In such cases legal remarriage is of course precluded, but in the majority of cases, in the case of the ex-husbands, at any rate, clandestine relations are probably formed. There is a certain amount of prejudice against divorced persons, more against the divorced woman than the divorced man, but this prejudice tends to diminish, except where the influence of the Catholic Church is felt. The remarriage of divorced persons is usual. The rate is about the same as that for widows and widowers.

Increase of divorce

The question of offspring in divorce

Prejudice against divorced persons

Remarriage of divorced persons

Both systems of matrimonial property-holding, *i. e.*, the community and the individual property system, are found, and in either system a tendency to guarantee the absolute economic equality or independence

Economic equality or independence of wives

<sup>1</sup> In 141,810 of the 328,716 divorces in the United States from 1867 to 1886, it is not even recorded whether or not the libellant had children. Wright, *Report*, etc., p. 210.

The *divorce question* in relation to offspring has been treated of in literature notably by the French playwrights Brieux (*Le Berceau*) and Hervieu (*Le Dédale*).

Conjugal sympathy

Co-education

Prolongation of  
education

Child labour laws

Spread of highest  
type of parenthood

Modern science  
and parental  
responsibility

of wives is marked. Participation of wives in the interests and to a certain degree in the occupations of husbands is also characteristic. This is chiefly due to the growing tendency against sex segregation in general. The most notable expression of this tendency is the movement for co-education of the sexes. In some communities institutional co-education has been put into practice in all institutional training. But in these communities, as well as in those which still more or less persistently segregate boys from girls in institutions, home education is still differentiated along sex lines. (In many cases, in fact, institutional education which is theoretically co-educational is so conducted that it emphasises instead of obliterates sex-lines in education.) The period of education tends to be lengthened, and activity which is likely to check the child's development is condemned or forbidden. There are, for example, in many communities, laws against the exploitation of child labour.

The third or highest stage of parenthood is more general in the modern simple family than in any other family type. Modern science with its teaching on the influence of heredity and of environment has cleared the way for the development of the sense of parental responsibility. In law there is little or no expression as yet of obligation to unborn offspring in sexual choice; but in general public opinion there is a tendency to condemn marriages likely to propagate serious hereditary disease. There is similarly the beginnings of condemnation of physical excesses, drunkenness, sexual promiscuity, etc., because of their probable effect upon offspring.<sup>1</sup> The knowledge,

<sup>1</sup> See, for the discussion of this subject in literature, Ibsen, *Ghosts*.

also a contribution of modern science, that both parents are from a physiological standpoint equal agents in reproduction is also becoming an important factor in public opinion about parental rights and privileges.<sup>1</sup>

The state or crystallised public opinion intervenes for the protection of infancy and childhood in many ways besides prohibiting injurious economic activity. Fœticide is a felony. Persons participating in the act are subject to imprisonment. Infanticide is classed with murder. For cruelty or neglect parents may be deprived of the custody of their children. Parents neglecting to avail of opportunities for the schooling of their children are subject to fine. In many non-legal ways as well there is marked tendency to hold the good of offspring of primary consideration in family life. On the other hand, the cost and prolonged period of education, and the absence of anticipation of returns economic or sympathetic from adult offspring, tend to make children undesirable. Voluntary childlessness is the outcome among those classes possessed of the requisite knowledge and self-control.

Protection of childhood by the state

Voluntary childlessness

Any account of the modern simple family would be incomplete without a review of the historical relations of Christianity and the Christian church to the family. It will also be well for us to consider this subject in anticipation of some of the ideas to be discussed in the next lecture.

Influence of Christianity on the family

In observing the nature of the sanction which attaches to family customs in the several social groups we have been studying, we could not fail to note the important part played by religious thought and rite.

The religious sanction of family custom

<sup>1</sup> Hervieu, *La loi d'homme*.



Religion preserves and sanctions custom in general. Often it does this explicitly.<sup>1</sup> Still more often it fosters the state of mind which is intolerant of innovation and respectful of whatever is traditional or authoritative. Christianity, like the other historical religions, and like customary religion, totemism, ancestor-worship, etc., has exerted and still exerts this influence upon the family. Again, like other religions, it has specifically impressed itself upon the family.

Condemnation of  
sexual desire

Condemnation of sexual desire as a base instinct is, perhaps, the main note of Christianity's direct mark upon the family.<sup>2</sup> Strict monogamy as the least evil means of satisfying this desire was preached. Theoretically<sup>3</sup> lack of chastity before marriage and of conjugal fidelity after marriage became as blamable in men as in women. Marriage itself was thought of as indissoluble, being a divine ordinance. (This is the usual assumption of historical religions.) Nevertheless life-long chastity was an ideal for both men and women. This view of sexuality tended no doubt to regulate purely sexual relations to the advantage of women; but it was and is a grave obstacle to the development of woman's personality. Women were stig-

Its effect on women

<sup>1</sup> The early priestly benediction on the marriage contract in Europe, the bride-mass, and finally the sixteenth-century sanction of marriage as a sacrament, accompanied by the ecclesiastical celebration of marriage, are cases in point. The current anti-divorce agitation of the Protestant churches of the United States is another illustration. See addresses and *appeals* of the Inter-Church Conference on Marriage and Divorce.

<sup>2</sup> The Pauline doctrine in 1 Cor. vii. is the most striking expression of this point of view. It is of course not original with Christianity. We have observed it before in primitive beliefs about the dangerous or contaminating influences of women.

<sup>3</sup> Church teaching not infrequently came into conflict with local custom and for a time at least was worsted by the latter.

matised as the means of satisfying unworthy desire. As such they became objects of seclusion and repression. Absolute subordination to a master, to male relatives or husband, was required of both unmarried and married, particularly married women. Although Protestantism condemned celibacy and all forms of sexual intercourse out of wedlock, it did not, directly at any rate, dignify marriage. Early marriage was preached as a necessary condition for the unworthy but inevitable gratification of the sexual impulse. Sexual restraint in marriage was not thought of.

Protestantism and marriage

Not to be overlooked, on the other hand, for their potential effects upon the family, are the Christian doctrines of the worth of the human soul irrespective of sex, etc., of the brotherhood of man, and of the duty of universal love and charity. In these beliefs mediæval chivalry and modern movements for the emancipation of women found a source and a sanction. The application of these beliefs to women, to slaves, serfs, wage-earners, etc., has been and is to be sure a matter of non-religious circumstances. The fact whether or not women *had* souls was once debated, for example, by mediæval churchmen.

Christianity, chivalry, and emancipation of women

To the relations between parents and offspring Christianity seems to have made no original contribution. It merely served to propagate the older Hebraic teaching of filial subordination and of the duty, on the part of married persons, of reproduction at all costs. We have already seen that it also favoured marital control. In groups, therefore, where, as in Rome, the patriarchate was disintegrating, or in groups where, as among the Germans, it had never been to any degree developed, Christianity became if anything a sanction

Christianity and the patriarchal family

Survivals of  
ancestor-worship

for a patriarchal type of family. In encouraging filial piety it was a soil for survivals of ancestor-worshipping cults or rather habits of thought. Family burial-grounds with their tombstone offerings of flowers, etc., family prayers, "grace" at meals, family benedictions and curses, masses and candle-burning for the souls of deceased relatives, etc., are illustrations.

Influences of  
mediæval church  
as a political  
organisation

The Christian church had as a political organisation certain special effects upon the family. In taking over from Roman law the contractual idea of marriage, canon law emphasised the view that the consent of the contracting parties was the essence of a marriage.

Parental consent  
to marriage  
unnecessary

Parental consent thereby became dispensable. Marriage at the age of seven, even if in opposition to parent or guardian, was legal, and all child marriages, with or without the consent of the guardian, could be avoided by the desire of the girl wife after she was twelve years old or by the boy husband after he was fourteen. Again just as the mediæval church practically opposed in this way the religious theory of filial submission, so it has also at times worked against chastity and monogamy. Sacerdotal celibacy was universally accompanied by sexual promiscuity, and through ecclesiastical quibbling over forms of ceremonial, marriage-bars making marriage void, etc., and ecclesiastical favouring of clandestine marriage, divorce and plural marriages were encouraged. Seeking to extend its control, the church also greatly multiplied the bars to marriage, notably the impediments of consanguinity and affinity, kinship to the sixth or seventh degree being decreed prohibitory to marriage.

Encouragements  
to promiscuity,  
divorce, plural  
marriage

Multiplication of  
bars to marriage

## NOTE A

### PATRIARCHAL SURVIVALS IN REGARD TO THE LEGAL CAPACITY OF MARRIED WOMEN.

Loeb, *The Legal Property Relations of Married Parties*, pp. 16-46.

### MARRIAGE AND DIVORCE IN ROMAN AND IN ENGLISH LAW.

Bryce, Essay XVI. in *Studies in History and Jurisprudence*, New York and London, 1901.

### MONOGRAPHS ON MODERN SIMPLE FAMILIES IN EUROPE.

Le Play, *Les Ouvriers Européens*, vol. v. and vol. vi., chap. viii.

### INCREASE OF DIVORCE IN THE UNITED STATES.

Wright, *A Report on Marriage and Divorce in the United States*, 1867-1886, pp. 129-149.

### HISTORICAL REVIEW OF CAUSES OF INSTABILITY OF MODERN FAMILY.

Pearson, *The Decline of the Family*, chap. v. in *National Life and Character*, London and New York, 1894.

### INSTABILITY OF FAMILY OF LOWER ECONOMIC CLASSES IN THE UNITED STATES.

Brandt and Baldwin, *Family Desertion*, pub. by the Charity Organisation Society, New York City, 1905.

### INCREASE OF WOMEN IN INDUSTRY IN MASSACHUSETTS.

*Sex in Industry*, pt. iv. of the 33d (1904) *Annual Report of the Mass. Bureau of Statistics of Labour*, Boston, 1903.

### INCREASE OF CO-EDUCATION IN THE UNITED STATES.

Harris, *Report of the Commission of Education of the United States* for 1902; Washington, 1903, ii., 2388-2390.

### INCREASE OF HIGHER EDUCATION IN THE UNITED STATES.

*Ib.*, i., xciii-xcvi.

### ROMAN AND CANON LAW ON DOMESTIC RELATIONS.

Maine, *Ancient Law*, pp. 128-170.

### MEDIÆVAL ECCLESIASTICAL MARRIAGE.



Howard, *A History of Matrimonial Institutions*, i., chaps. vii.-viii.

PROTESTANT REFORMS IN MARRIAGE.

*Ibid.* i., chap. ix.

See Notes B and C to the following lecture for suggestions for reading and research about the modern family along controversial lines.

NOTE D

ANCIENT ROMANS :

On intestacy and in default of an heir succeeding as co-owner of the patrimony (descendants under power), let the nearest agnate take the inheritance. In default of an agnate, the inheritance is to fall to the gens. Table v. The prætor gives emancipated as well as unemancipated descendants possession of the property. *J.* iii., i., § 9. If a lunatic be not provided with a curator, let the care of his person and property fall to the agnates, or, in default, to the gens. Table v. A descendant, whether male or female, whether tracing descent through males or females, whether emancipated or not, is to be preferred to all ascendants and collaterals. We wish that in all successions the distinction between agnates and cognates shall disappear. In tutorship, likewise, no difference shall arise from the law of agnation or cognation; but we forbid women to undertake the burden of the tutorship except in the case of a mother or grandmother, and then only after they have agreed not to remarry, and in the absence of a testamentary tutor. *J.*, Novel. cxviii., chaps. i., iv., v.

Title by possession to a Roman citizen's property can never be acquired by an alien. Table vi.

FRENCH :

391. The father may appoint a special counsel to the surviving mother who is guardian, without whose advice she cannot take any steps in connection with the guardianship. If the father specifies the purposes for which the counsel is appointed, the guardian shall be able to act in all other matters without his assistance. 395. If the mother, who is guardian, wishes to remarry, she must call together the family council before the celebration of the marriage, and such council shall decide whether

she may retain the guardianship. If she fails to issue this call she loses the guardianship by right; and her new husband shall be jointly responsible for all that may follow in connection with the guardianship which she has unduly retained.

402. When no guardian has been appointed to a minor by the survivor of the father or mother, the guardianship belongs by right to the paternal grandfather, or, in his default, to the maternal grandfather, and so on upwards, and in such a way that the paternal ascendant shall always be preferred to the maternal ascendant in the same degree.

PEOPLE OF UNITED STATES:

When the morals or safety or interests of the children strongly require it, the court may withdraw their custody from the father and confer it upon the mother. § 248.

Guardianship belongs exclusively to the parents: first, to the father, and, on his death, to the mother. Father's right formerly preferred to mother's in all cases, while modern tendency is otherwise. § 285. A father, but in most States not a mother, may appoint a testamentary guardian. § 287.

## LECTURE XV

### ETHICAL CONSIDERATIONS

Hasty ethical  
interpretation  
disastrous

YOU may have noted that in the foregoing lectures no explicit reference has been made to the ethical bearing of the facts discussed. It was important for us to clearly understand these facts before we attempted to interpret them from an ethical standpoint. An ethical interpretation of half-known facts may, and only too frequently does, lead to conclusions that are not only scientifically false, but morally disastrous. To refrain from premature interpretations or conclusions is the *right* as well as the scientific method of procedure.

Criterion of ethical  
family

Although we have not explicitly discussed the ethical side of any topic in our account of the family, yet it was not difficult to surmise at the very beginning the form that such a discussion would take. Here, at any rate, biology and ethics do not conflict.<sup>1</sup> The highest type of family is the one which is so organised that infancy may be prolonged and that the advantages possible through its prolongation may be secured to offspring. In other words, immature offspring must be supported, protected, and educated throughout the period of immaturity in such a way that they will be perfectly adapted to their total environment, and will also be able to avail themselves of whatever opportunities for progressive indi-

<sup>1</sup> Huxley, *Evolution and Ethics*.

vidual variations may spring from their own natures and *be tolerated in their environment*. All questions of the ethical fitness of given traits of family structure must be referred to this standard for judgment. The character of parental care should depend, then, on the nature of the child and on that of his actual and *potential* surroundings. If they are complex, a successful process of adaptation will needs be long. Let us note here, incidentally, that parents should so control the child's environment that it may never be too complex for the child's power of adaptation. Juvenile criminality is, as a rule, nothing more than the result of the child's futile effort to adjust himself to an over-complex environment.<sup>1</sup> In modern civilisation in the case of children who show that they will never be able to cope with a very complex environment, the interests and habits of the child should be so influenced and formed that when at maturity the choice to a certain extent of an environment is open to him, he may choose the one to which he is fitted, even if it be popularly thought of as inferior to what he was "born to." We know that hereditary caste or class regulation of economic pursuits results in a great social waste of individual ability or talent. In modern civilisation the identification of "social position" with certain economic activities, or, in the case of women, with freedom from work of any kind, is, of course, merely a survival of such caste restrictions. It is still a serious check upon the democratic principle of equal opportunities for all for personal development. In its tendency to drive the individual into work for

Parental duties in a complex environment

Juvenile criminality

Adaptation of environment to individual

<sup>1</sup> The painful child suicide and murder incident in Hardy's *Jude the Obscure* is a strikingly clear illustration in point.



which he is not fit it is prejudicial to the children of all economic classes. If, for example, through desire to "rise" on the one hand and not to lose caste on the other, both the son of a day labourer and the son of a railway president become inefficient clerks when each might have been a proficient blacksmith or mechanic both society and workman suffer loss.

Encouragement of  
personal initiative

Need of discipline

The task of studying the individual capacity of the child in adapting him to a changing environment is not easy, but the encouraging of his capacity for individual variation is still more difficult. Personal initiative is a rare quality, but it might not be quite so rare if it were not so frequently suppressed in childhood. The pedagogy of the modern kindergarten has been distinguished by this insight. Kindergarten essays have also shown, however, how difficult it is to combine encouragement of initiative with discipline or systematic adaptation to environment. This is the undertaking that falls, however, and falls primarily, upon parents. A scientific application of this theory of parental education in any society, in our own, for example, would mean a long treatise on education, requiring a careful consideration of existing forms of culture and of many aspects of individual and social psychology.<sup>1</sup> The personal application of the theory is the problem that must be met by all intelligent and devoted parents. You are not engaged as scientists

<sup>1</sup> This treatise remains to be written. The writing of it would be a great and memorable work. It would supply a scientific basis for an unparalleled system of national education in which the present divorce between home and school education would not occur. Such a treatise would be a chapter, in turn, of a still greater work on social selection. Cp. Barth on the interaction of education and social development, *Die Geschichte der Erziehung in soziologischer Beleuchtung* in *Vierteljahrsschrift für wissenschaftliche Philosophie u. Soziologie*, ii., 1903.

in writing the treatise or as parents in solving the problem, but there are certain subjects connected with it which as potential solvers of the problem it would be well for you even now to consider.

Parental duty begins, paradoxically speaking, long before parenthood. Individuals influence the lot of their unborn children (1a) through their own education in general, (1b) through their special preparation as educators, (2) through their choice of a husband or wife who is to share with them responsibilities of inheritance and education.

(1a) We have been led to believe that character, finely developed womanhood or manhood, is the goal of our education. We have also been taught that we owe services to our community. In the ideas that through the making of our own character we are making that of our children, and that successful child-rearing is one of the most, if not the most, important service we can render society the two aims of our education combine. I doubt not that this point of view will be reassuring to those of you who are impatient, as most of us have been at one time or another in any prolonged and seemingly over-individualistic educational period, to take up the business of life for which you have been so long preparing. (1b) Herbert Spencer, in his treatise on education, gave as one of his five divisions of education training in the education of others, *i.e.*, the education of the potential parent. As yet we have paid little or no attention to this view, but the time will undoubtedly come when a child-study course will be part of everybody's education. (Such study, needless to say, will differ a great deal from that followed in the professional normal school of

Parental duties  
before the birth of  
offspring

Character the end of  
education

Social service

Combination of  
aims in child-  
rearing

Spencer on educa-  
tion of potential  
parents

Guilt of propagating  
disease through  
reproduction

to-day.) We shall refer to this subject again.<sup>1</sup> (2) There are signs already of the spread of the idea that the individual is bound to consider the effects upon society of his or her marriage. Individuals tainted by epilepsy, insanity, inebriacy, deaf-mutism, venereal disease, etc., are thought by many to be morally guilty if they marry. There is a growing realisation of the cost to the state of reproduction by its diseased or vicious subjects, and at the same time a growing inclination to prevent these classes from reproducing themselves by segregation, castration, etc.

Eugenics

If the biological knowledge of the future throws more light upon the present-day mysteries of heredity, demonstrating the disastrous results of the mating of those handicapped by minor as well as by more flagrant taints or lacks, the social obligation in marriage will be held more and more considerable. The social demand for the possession of progressive traits, physical, moral, and mental, as well as lack of disease on the part of child bearers and begetters will exert more and more pressure upon the individual. Eugenics, as Professor Galton suggests, will become a religious dogma.<sup>2</sup> Before continuing to discuss

<sup>1</sup> See pp. 352-3.

<sup>2</sup> As a preliminary and popular emphasis on the importance of this point of view might it not be well to embody in marriage licenses data about the personal and family health and character of bride and groom, likewise a certificate of the bride's previous training in child-care? Such a record would be a *partial* proof of the matrimonial eligibility or non-eligibility of the license holder. A favourable record would entitle the holder to a place upon the matrimonial *white-list*, so to speak. Cp. Stanley, *Artificial Selection and the Marriage Problem*, in *The Monist*, Oct., 1891. See Morrow, *Social Diseases and Marriage*, New York and Philadelphia, 1904, pp. 366-369, for the futility of requiring a state medical certificate as a means of preventing the propagation of venereal disease in marriage. See also Mr. Galton's and Dr. Mott's suggestions about eugenic certificates in *Nature*, Feb. 23, 1905.

this subject of the importance of sexual choice, let us consider *desiderata* in the marriage<sup>1</sup> relation itself.

According to our view of the family's function, the relation between married persons should be that best fitting them for their task of parenthood. It should be one allowing for or rather encouraging a full development of their natures, for all their capabilities should be taxed in their rôle of parenthood. Polygyny, including concubinage, prostitution, etc., have tended to distribute womanly functions in different classes of women. Generally speaking, the concubine, prostitute, or mistress serve for sexual sympathy and gratification, the chief or legal wife for reproduction. Economic activities are also apt to fall unequally upon these different classes of women. Monogamy is therefore from the point of view of parenthood a superior form of sexual intercourse, for it allows of a combination of womanly functions in one woman. The resulting type of woman is a better educator and her children fall heir to a richer inheritance of personality than is the case where women are differentiated into child-bearing and non-child-bearing or productive and non-productive<sup>2</sup> classes.

Criterion for  
marriage

Again reciprocity of conjugal rights and duties is desirable for parenthood. If marriage have a proprietary character, neither the owner nor the owned is entirely fit to develop free personalities in his or her children. Moreover the idea of marital ownership

Conjugal recipro-  
city

<sup>1</sup> In this lecture we are using the term in its popular sense.

<sup>2</sup> Women, of course, like men, are differentiated as producers and non-producers for reasons irrespective of the forms of marriage. In all cases the offspring of the non-producers are likely to suffer from this differentiation. See p. 346.



Social meaning of  
emancipation of  
woman

more or less involves that of parental ownership, and the latter, as we have seen, is incompatible with a high type of parenthood. The custom of proprietary marriage inevitably leads, for example, to restrictions upon female education. Now just in so far as a woman's education is limited is she handicapped as an educator of her children. It is unfortunate that in the *emancipation of woman* agitation of the past half-century the reformers failed to emphasise the social as adequately as the individualistic need of change. If women are to be fit wives and mothers they must have all, perhaps more, of the opportunities for personal development that men have. All the activities hitherto reserved to men must at least be open to them, and many of these activities, certain functions of citizenship<sup>1</sup> for example, must be expected of them. Moreover, whatever the lines may be along which the fitness of women to labour will be experimentally determined, the underlying position must be established that for the sake of individual and race character she is to be a producer as well as a consumer of social values.<sup>2</sup> As soon as this ethical necessity is generally recognised the conditions of modern industry will become much better adapted to the needs of women workers than they are now, the hygiene of workshop, factory, and office will improve, and child bearing and rearing

Labour conditions  
adapted to women  
workers

<sup>1</sup> The enlightened political opinion of to-day finds the chief if not the only warrant for universal male suffrage in its being an educational means. In this view women need the suffrage at present even more than men.

<sup>2</sup> See p. 345. Dr. Alice Drysdale Vickery gave striking expression to one phase of this subject at a recent discussion of the London Sociological Society. She urged that without economic independence the individuality of woman could not exercise that natural selective power in the choice of a mate which was probably a main factor in the spiritual evolution of the race. *The American Journal of Sociology*, Sept., 1905, p. 279.

will no longer seem incompatible with productive activity.

In view of the necessity of conjugal reciprocity of rights and duties for personal development and of mutual affection and respect for enduring monogamy, sexual choice becomes a very important matter, a matter needing mature judgment and therefore preclusive of very early marriage. If young people were more carefully and reasonably educated for the functions of marriage and parenthood they could undoubtedly be fitted at an earlier age than they are now for the exercise of these functions. An abiding argument against early marriage lies, however, in the differences of sexual choice at different ages. When sexual choice resulting in sexual intercourse and child-bearing occurs after maturity, mental and moral are more apt than merely physical traits to influence the choice and therefore, according to the law of sexual selection, to be propagated in the offspring. Moreover the development of these traits in the parents enables them to provide more carefully for their children than immature parents. Here we are face to face with what is perhaps the most difficult task and what promises to become one of the most puzzling problems of current morality. Hitherto in almost all societies late marriage has either been accompanied by a lack of chastity before marriage on the part of the youth of both sexes or, where female chastity is valued, by the lack of chastity on the part of males with the growth of a prostitute class.<sup>1</sup> Now it is unnecessary to more than point out

Importance of  
sexual choice

Prostitution un-  
democratic

<sup>1</sup> Exceptions may, as we have seen, occur in groups where the young women become the property of the older or richer men to the privation of the younger or poorer men.

that modern democracy is as incompatible with prostitution as with slavery. Our toleration of prostitution is a survival of clan morality, and taboo upon discussion of the subject is largely responsible for our failure to realise its clash with modern points of view. The argument is brief. If we desire monogamy we must condemn prostitution, but we must necessarily condemn male as well as female prostitutes. If, on the other hand, we do not condemn promiscuity in men, it must be on the ground that their nature is radically unadapted to monogamy and that monogamy is undesirable. In this case we should not discriminate against the women necessary to the gratification of men's polygynous instincts. If the social stigma were taken off the prostitute, if she were no longer a segregated person, prostitution might then become, in the sense of a division of labour, more consistent with a democratic point of view. It would nevertheless be untrue to democracy in its large meaning, *i. e.*, equal opportunities for the total development of man or woman. We have therefore, given late marriage and the passing of prostitution, two alternatives, the requiring of absolute chastity of both sexes until marriage or the toleration of freedom of sexual intercourse on the part of the unmarried of both sexes before marriage, *i. e.*, before the birth of offspring. In this event condemnation of sex license would have a different emphasis from that at present. Sexual intercourse would not be of itself disparaged or condemned, it would be disapproved of only if indulged in at the expense of health or of emotional or intellectual activities in oneself or in others. As a matter of fact, truly monogamous relations seem to be those most con-

ductive to emotional or intellectual development and to health, so that, quite apart from the question of prostitution, promiscuity is not desirable or even tolerable. It would therefore, seem well from this point of view, to encourage early *trial* marriage, the relation to be entered into with a view to permanency, but with the privilege of breaking it if proved unsuccessful and in the *absence of offspring* without suffering any great degree of public condemnation.

Early trial  
marriage

The conditions to be considered in any attempt to answer the question that thus arises are exceedingly complex. Much depends upon the outcome of present experiments in economic independence for women, a matter which is in turn dependent upon the outcome of the general labour "question." Much depends upon revelations of physiological science. If the future brings about the full economic independence of women, if physiologists will undertake to guarantee society certain immunities from the sexual excess of the individual,<sup>1</sup> if, and these are the most important conditions of all, increases in biological, psychological, and social knowledge make parenthood a more enlightened and purposive function than is even dreamed of at present and if *pari passu* with this increase of knowledge a higher standard of parental duty and a greater capacity for parental devotion develop, then the need of sexual restraint as we understand it *may* disappear and different relations between the sexes before marriage and to a certain extent within marriage may be

<sup>1</sup> Through the discovery of certain and innocuous methods of preventing conception. The application of this knowledge would have to be encouraged by public opinion in cases where conception would result in a degenerate offspring. Public opinion would also have to endorse the segregation of persons tainted with communicable sexual disease.



## Needed reforms

expected. Meanwhile, on the basis of present circumstances, public opinion should tend (1) to condemn prostitution or adultery<sup>1</sup> in men as well as in women, (2) to make the transmission of venereal disease in marriage a penal offence,<sup>2</sup> (3) to render identical the *age of consent* with the legal age of marriage and to abolish laws requiring parental consent to marriage, (4) to consider parental duties the same in the case of an illegitimate as in that of a legitimate child,<sup>3</sup> and (5) to abolish legal separation and divorce law provisions prohibiting the defendant to remarry.

Reasons for recommendations 1, 2, 3, and 4 have been given elsewhere.<sup>4</sup> In regard to the last recommendation it may be stated that prohibitions against the remarriage of legally separated or divorced persons are inevitably factors in illegitimate sexual intercourse. Moreover if the parent who retains the guardianship of the children is unable to remarry, hardship to the children, economic and otherwise, may result.

## The existence of offspring a factor in divorce legislation

How little the idea that sexual restraint is primarily for the sake of offspring is as yet consciously entertained may be known from the disregard of this argument against the system of legal separation, as well as from the nature of much of the current divorce agitation in general. Consideration of offspring is

<sup>1</sup> It is not rash to say that in this country, at any rate, married women must, if this opinion is to be held, become more sensible of their so-called conjugal duty in marriage. Their disregard of this duty is one of the factors of increasing prostitution and practical bigamy.

<sup>2</sup> See Morrow, *Social Diseases and Marriage*, pp. 369-378.

<sup>3</sup> The *black-mail* argument so often urged against (3) and (4) is obviously specious. In what other case does society refuse to consider a crime criminal because the innocent may be accused of it?

<sup>4</sup> See pp.—

rarely to the fore in current controversy about the dissolution of marriage, and in no modern law on divorce, with one or two exceptions, is the existence of offspring taken as a determining condition. From our standpoint, however, the effect of divorce upon the children of the separating parents is the foremost consideration. Might it not be worth while, in our present divorce law experimentation, to discriminate between childless divorce seekers and divorce seekers with children, making the law much stricter for the latter than the former? At any rate, it seems as if the emphasis of public condemnation should fall very much more upon the irresponsible parent in case of divorce than upon the irresponsible husband or wife.

One objection that may be raised against such a two-fold divorce law is that it would encourage voluntarily childless marriage. And yet is not the latter state preferable to the birth of offspring to parents who are not capable of prolonged monogamy? Let us remark in this connection that the voluntarily childless marriage of to-day is an indication of a tendency towards sexual freedom before marriage. It is a progressive substitute for prostitution; but, like prostitution, it is a social evil, in so far as it is a check upon the development of personality.

Voluntarily  
childless marriage  
assimilated to  
prostitution

Voluntarily childless marriage, or the restriction of child-bearing to the birth of one or two children, a much more general occurrence, is no doubt a very serious condition, and one, too, that seems to be on the increase. Unfortunately it seems to affect the classes who, for the sake of the cultural progress of the race, would do well to have a more numerous offspring. The classes, on the other hand, who from

"Race-suicide"

economic and cultural points of view, can least afford child-bearing are those who are most prone to it. This state is, of course, inevitably characteristic of the classes which are the least culturally developed, and therefore the least self-controlled. If, however, the educational agencies which reach these classes would frankly teach them that reproduction irrespective of circumstances was criminal instead of righteous, at least one of the bars to right conduct in this matter would fall away.

Natural selection  
fails

As it is, a high infant mortality rate is, as we have seen already, the accompaniment of this high birth-rate. The *laissez faire* argument that the one rate offsets the other, and that through the survival of the fittest here as elsewhere the species prospers is, in the case of urban populations at any rate, fallacious. The survivors themselves, in the wretched environment of the average city labourer's family, are only too commonly maimed, diseased, and undeveloped creatures, fit only to be a source of disaster to the community.

Social responsibility for the care of  
childhood

As soon as we fully realise the solidarity of interests of all parts of a society, and the contagious nature of social evil in whatever part of a group it may exist for the whole group, our present *laissez faire* policy in regard to the welfare of childhood is bound to change. The history of child-labour, age-of-consent, and compulsory education laws points to a developing public opinion in this connection. The care of children during the first five or six years of life, the most important years, from an educational standpoint, is still almost wholly left, however, to parents irrespective of their qualifications as parents. The training

of girls of all economic classes in the care of young children,<sup>1</sup> and a system of state supervision<sup>2</sup> of the home education of actual and potential public school children are suggested as initial methods in this social reform. In this connection it may also be suggested that gradual legal restrictions upon the right of parents to the earnings of their children would serve a double purpose in being a check upon the birth-rate, and in facilitating the operation of child-labour and compulsory education laws.

As for our over-prudential, well-to-do classes, mere exhortations to the married persons among them to enlarge their families would seem to be of little avail. The education of young people of both sexes on questions of sex and reproduction on the one hand, and on the ethics of economic production and consumption on the other, would be more to the point. Through ignorance of one another's natures and of sex hygiene in general, husbands and wives create conditions very unfavourable both to enduring monogamy and to re-

Educational needs

<sup>1</sup> The deplorable ignorance of housewifery and the still more deplorable parental neglect and indifference found in the British workingman's family led the recent English *Inter-departmental Committee on Physical Deterioration* to recommend the establishment of *continuation classes* at which the attendance of girls who had left school should be made obligatory twice a week during certain months of the year. "The courses of instruction at such classes should cover every branch of domestic hygiene, including the preparation of food, the practice of household cleanliness, the tending and feeding of young children, the proper requirements of a family as to clothing, everything, in short, that would equip a young girl for the duties of a housewife." *Report*, pp. 42-43.

<sup>2</sup> Why should not special public school officers, the school nurse with large functions, for example, supervise and to a certain extent direct the home training of children in public school and of children below school age? Desire to safeguard the privacy of the home is *generally* only an expression of clan morality. It is a plea for parental ownership as against the democratic view of state responsibility for the education of its citizens.



production.<sup>1</sup> Franker and more intelligent teaching of girls in particular would make them realise the handicap of an undue postponement of marriage and child-bearing, and the necessity for their own development of substituting child-bearing for the meretricious kind of self-cultivation too often at present in vogue. Discussion of the question of the teaching of certain standards of production and consumption to boys and girls would take us too far afield; it is enough to suggest that if both boys and girls were educated to be productively efficient and were inspired to work irrespective of any economic necessity to work, a long step would be taken to the solution of "race-suicide," not to speak of many other current "problems." Were it the "fashion" for every able-bodied adult person to be a producer as well as a consumer, of social values, much of our present wasteful and unrewarding kind of consumption would disappear, and other wants, among them the desire for offspring, would have a chance to become more effectual.

The general economic and cultural advances of the nineteenth century succeeded in side-tracking most of the survivals of the patriarchal family of our ancestors. The general division of labour more or less necessitated the carrying on of production outside of the family. Freedom of migration tended to disintegrate kinship ties. Advances in science weakened the religious sanction of custom in general and of family custom in particular. Finally, the spirit of

<sup>1</sup> Dr. Morrow suggests, for example, that "race-suicide" may in many cases be due to the infection of the wife by the husband with gonorrhœa, rather than to voluntary limitation of offspring. *Social Diseases and Marriage*, pp. 108-110. See also *Charities and The Commons*, Feb. 24, 1906.

freedom for individual development and initiative undermined marital and paternal privilege. This disintegration of the proprietary family has seemed to some people to bode that of every form of the family. They argue that any type of family organisation is inconsistent with our rampant individualism. Many facts seem to justify this argument; nevertheless are there not more optimistic signs in view? Is there not a growing realisation that individualism and altruism are mutually dependent, that the state must develop through the individual, but that the individual must also develop through the state? And is not the conception that child-rearing is a social as well as an individualistic function, a natural corollary of such a political philosophy? Through the working out of this conception the family may regain its lost prestige.

Individualism,  
altruism, and the  
family

## NOTE A

## THE ETHICAL FAMILY.

Spencer, *The Principles of Sociology*, pt. iii. chaps. i., ii., viii.

## JUVENILE CRIMINALITY.

Hall, *Adolescence*, New York, 1904, i., chap v.

## THE KINDERGARTEN METHOD.

Salmon and Hindshaw, *Infant Schools*, London, New York, and Bombay, 1904, pp. 264-312.

## THE PROPAGATION OF VICE AND DISEASE THROUGH REPRODUCTION.

McCulloch, *The Tribe of Ishmael* in *Proceedings of the National Conference of Charities and Correction*, 1888, pp. 154-159.

Dugdale, *The Jukes*.

Morrow, *Social Diseases and Marriage*, chaps. i., v., vii., viii., xvi., xviii., xix., xx.

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Spencer, *Education*, New York, 1900, pp. 40-51.

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Galton, *Eugenics: Its Definition, Scope, and Aims*. Address before the Sociological Society, May 16, 1904, printed in *The American Journal of Sociology*, July, 1904; *Studies in Eugenics*, *ibid.*, July and Sept., 1905.

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*Health Statistics of Female College Graduates*, published in the 16th Annual Report of the Massachusetts Bureau of Statistics of Labour, Boston, 1885.

#### DISHARMONY BETWEEN THE RISE OF SEXUAL DESIRE AND LATE MARRIAGE.

Metchnikoff, *The Nature of Man*, New York and London, 1903, chap. v.

#### SOCIAL PROBLEMS OF SEX.

Pearson, *The Woman's Question in The Ethic of Free Thought*, London, 1888, pp. 370-395.

Clapperton, *Scientific Meliorism*, London, 1885, chap. xvii.

#### THE SOCIAL MEANING OF MATERNITY.

Pearson, *Woman and Labour in The Chances of Death and Other Studies in Evolution*, London and New York, 1897, i., 226-255.

## NOTE B

The following references will serve in studies of current public opinion on the subjects cited.

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Discussion of advantages and disadvantages of regulation. Johnson, *The Social Evil*, chaps. v.-xi., and pp. 171-181

*Ibid.*, Morrow, *Social Diseases and Marriage*.

## EMANCIPATION OF WOMEN.

Historical review of the political and public rights of women in civilisation. Ostrogorski, *The Rights of Women*, London and New York, 1893.

For the sake of maternity. Wollstonecraft, *A Vindication of the Rights of Woman*, London, 1891, pp. 225-235, 258-265, 280-287.

Legal independence of married women will cause instability in marriage. Economic independence will lessen her value as a mother. Starcke, *The Primitive Family*, pp. 269-273.

Possibility of readjustment in division of labour according to sex. Ellis, *Man and Woman*, chaps. i. and xviii.

Economic independence will lead to "race-suicide" among the best endowed women, to the disaster of the race. Steinmetz, *Feminismus und Rasse* in *Zt. f. Socialwissenschaft*, vii. (1904), 751-768.

An increase of individuation among women needed to check human multiplication. Geddes and Thomson, *The Evolution of Sex*, chap. xx.

## DIVORCE.

Reports of the National Divorce Reform League, 1885-96.

Discussion by Cardinal Gibbons, Bishop Potter, Colonel Ingersoll, Mr. Gladstone, etc., in *The North American Review*, Nov. and Dec., 1889.

Education in home-making a remedy for divorce. Legislation futile. Wilcox, *The Divorce Problem*, 1891, pp. 62-74.



Divorce should depend only on mutual consent, the state interfering only in the provision for offspring. Carpenter, *Marriage, a forecast*, in *Love's Coming-of-Age*, Manchester, 1897.

#### CO-EDUCATION.

Opinions of Massachusetts school superintendents, clergymen, physicians, etc., on co-education. *Majority and Minority Reports of the Special Committee on Co-education of the Sexes*, School Document No. 19, 1890, Boston, 1890.

Arguments in support of various experiments in co-education in England. *Co-education*, ed. by Alice Woods, London, New York, and Bombay, 1903.

The education of girls should be differentiated from that of boys. Hall, *Adolescence*, chap. xvii.

#### AGE OF CONSENT.

*Arena* xi., xii., xiii., xiv. (articles in vol. xiv. express in particular prevailing sentiment in the Western States about rape and seduction).

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#### CHILD LABOUR LAWS.

*Annals of the American Academy of Political and Social Science*, xx. (1902), 143-231.

*Ibid.*, May, 1905.

Publications of the New York Child Labour Committee and of the National Child Labour Committee. Headquarters 105 East 22d Street, New York City.

#### NOTE C

Is the religious sanction (1) necessary, (2) desirable in social education? Discuss advantages and disadvantages of the American boarding school system. Outline a program for the instruction of adolescents in sex hygiene and morality. Make a study of prevailing public opinion and of practice in regard to the preclusion of the unfit from parentage. Analyse in different industries and professions present inadequacies of conditions imposed on women workers, and recommend readjustments making labour conditions compatible with healthy child-bearing and rearing.

## APPENDIX

Extracts from the *questionnaire* compiled by Dr. Albert Hermann Post, for the International Society for Comparative Law and Ethnography, of Berlin.<sup>1</sup>

### FAMILY RELATIONS

#### A.—FAMILY ORGANIZATION IN GENERAL

Are there narrower and wider circles of kinship? Are there clans with animal (or plant) names? Has the animal a cult? (Is its flesh not eaten, etc.?) Are the clans descended from a common ancestor? His name? Genealogy?

#### B.—KINSHIP

Terms for relationships. Are the kinship terms that we use in Europe applied in the same way?

Is kinship traced only through the maternal line or only through the paternal, or through both?

Is there artificial kinship? Is there a covenant of brotherhood? Forms? Object? Effects, *e. g.*, upon property, upon the obligation to support, upon blood-feud? Can strangers be adopted into the family? Forms? Effects? Are children given to strangers to be brought up? Do kinship relations thereby arise between foster parents and children? Between foster brothers and sisters?

#### C.—MUTUAL LIABILITY OF KINDRED

Are kinsmen liable for the offences of a relative? Have they to help in paying fines? Are they punished together with the offender? Are they liable for debts? Have kinsmen to support one another in poverty? Have they to ransom one another? Which relatives are liable for one another, and how far does the liability extend?

<sup>1</sup> Steinmetz: *Rechtsverhältnisse von eingeborenen Völkern in Afrika und Ozeanien*, Berlin, 1903. Compare the *questionnaire* compiled by Prof. Kohler in *Zt. f. vergleichende Rechtswissenschaft*, xii. (1897), 427-436.

## D.—NARROWER FAMILY RELATIONS

## I. THE HOUSEHOLD

What groups of kindred live together in a household? How are the family dwellings regulated? Describe in particular the polygamous household. Do several wives live together with their husband, or has each wife her own hut? Do the huts form independent households? Is one wife the head-wife? Her relation to her husband and to the other wives and their children? What determines her position as head-wife? Have the children of the head-wife prior rights, particularly in inheritance?

Are there surrounding house-communities, kraals, clan-villages? Their government?

Has the household household property? Of what does it consist? Is the work in common? What becomes of the profit? Have the individual members individual property?

Do the unmarried live separate from the married?

## 2. FAMILY HEAD (HOUSE FATHER)

Who is the family head? Is the head chosen? Is the office inherited? According to what order of inheritance?

Rights and duties. Family justice (killing, discipline, etc.). Right of selling or pawning members for debt? Control of property? Liability for the offences and debts of members.

How long do the rights of the family head over men and women last? Do they terminate at majority or at marriage?

Is the office of family head vacated with age? Can the family head be deposed for mismanagement?

Can housemates separate from the household? For what reasons?

Can housemates be exiled from the household? For what reasons? With what consequences?

## E.—MARRIAGE RELATIONS

1. In general. Polygyny. Is the number of wives limited or unlimited? Does a woman ever have several husbands? Does a man ever have one wife only? Through custom or poverty? What rules govern in polyandry the intercourse of the husbands with the wife? Are the husbands brothers? What cause is al-

leged for this form of marriage? Is marriage a transitory or a permanent relationship? Is there *time-* or *trial-*marriage?

2. Must the wife come from a different tribe, village, etc., than the husband or must she come from the same?

3. Does the wife become part of the husband's family or does the husband become part of the wife's (*e. g.*, must the husband live with the wife's parents or *vice versa*?) or do both continue to live in his or her own family, or does the couple begin independent housekeeping?

#### 4. CELEBRATION OF MARRIAGE

Are there rape-symbols, *e. g.*, mock fights at weddings?

Is marriage based on an agreement between the families of the bride and groom or upon a contract between bride and groom themselves? Who has the right of betrothal? Must bride and groom assent?

Is there a courtship? Marriage-brokers? Are presents made during courtship to the family of the bride? How is courtship initiated and how withdrawn from?

Must a bride-price be paid to the family of the bride? Must the amount of the bride-price be agreed upon or is it customary? Is the amount limited by law? Does the amount vary for virgins, widows, divorced women, according to position, beauty, etc.? Is the bride-price paid all together or in instalments? What rights are recognised in regard to husband and wife and to their children before payment is completed? Is the wife cut off from her family through payment of the bride-price or does her family still hold rights over her? Must the kindred of the groom contribute to the bride-price? Have the bride's relatives claims upon the bride-price? Is the bride-price returned to the bride as dowry? Does it serve as a reserve fund in case of widowhood? Must the family of the bride make compensation for the bride-price? What are the consequences, (1) when one of the betrothed couple dies before the marriage, (2) when husband or wife dies, (3) when the marriage remains unfruitful, (4) when one deserts the other?

Does marriage by barter occur?

Marriage by service?

Consequences of a breach of the betrothal contract, (1) for



the family, (2) for the bride and groom? Right of withdrawal?  
Child-betrothal and child-marriage?

#### 5. OBSTACLES TO MARRIAGE

Near relationship, age, differences in position, caste differences?  
Are younger brothers or sisters precluded from marrying before elder?

#### 6. WEDDING

Describe wedding customs. Does importance attach to the virginity of the bride? At what time of the year do weddings occur?

7. What is the relation between betrothed persons, between married persons? Must, in particular, betrothed and married persons avoid one another, and their respective kindred?

#### 8. DISSOLUTION OF MARRIAGE

Death of husband or wife. Must the survivor follow the deceased in death? Mourning period? Does the widow return to her family, or is she inherited by her husband's relatives (the so-called levirate)? Inheritance of matrimonial property? Must the widower pay the family of his deceased wife a fine? Likewise when the bride-price has been paid over?

Divorce. Can either husband or wife dissolve the marriage at any time at pleasure? Can the husband repudiate the wife? Consequences? Can the wife take refuge in her father's house? Consequences? Are there grounds for divorce (barrenness, etc.?) Forms of divorce? Effect of divorce upon matrimonial property and upon offspring? May divorced persons marry again?

9. Do special rules govern a second marriage, particularly in the marriage of a widow?

#### F.—NON-MARRIAGE RELATIONS

Are any sexual relations outside of marriage sanctioned by custom? (Free sexual intercourse of young people before marriage.) Are girls prostituted before marriage? Public prostitutes? Wife-lending or exchange, etc.? Position of illegitimate

offspring? Is pederasty practised? How is it considered? Are there any men who act like women? What is their position?

### G.—HOME-LIFE

#### I. BIRTH

Is the birth of a child celebrated by a feast? Does such a celebration differ according to the sex of the child? Must the parents of the mother or the father follow a certain diet and refrain from certain activities after the birth or during the pregnancy? What reasons are given in such case? Do husband and wife live separate after the birth (during the lactation period) or during the pregnancy? Must the wife be confined in the house of her husband or of her parents? Are new-born children *exposed* or killed? What happens at the birth of twins or of defective or deformed children or at the birth of children under unusual conditions? Are deformed children brought up to special occupations?

#### 2. DEATH

Is the place where death occurs deserted? Are belongings of the deceased destroyed or given away to strangers? Are presents made to the nearest relatives by their friends? Is the corpse eaten? Is burial forbidden in case the deceased have debts? Is the person who buries the deceased liable for his debts?

#### 3. YOUTH

After whom are the children named? Circumcision? Different kinds of circumcision? What ceremonies and practices corresponding to circumcision are practised by women? What reasons for circumcision are given? Effects of circumcision upon qualification for inheritance, marriage, carrying arms; ceremonial? Majority (time). Initiation ceremonial? Tests of character.

#### 4. WOMEN

What rights have they? Can they (1) hold property, (2) inherit, (3) testify in court? Have they political rights?

## 5. AGE AND ILLNESS

Are old and sick people killed off? Are they eaten? What reasons are given for both customs?

## INHERITANCE

Who is entitled to inherit? Do offspring or nephews inherit? To what extent are women, slaves, chiefs, kings, entitled to inherit? Do husband and wife inherit from one another? Order of inheritance? Does only one person inherit or is the inheritance divided? Of what does it consist? Are special kinds of property inherited according to a special order of inheritance? Is the heir liable for the debts of him from whom he inherits? Is there testamentary disposition?

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